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Supreme Court of the United States

[redacted]

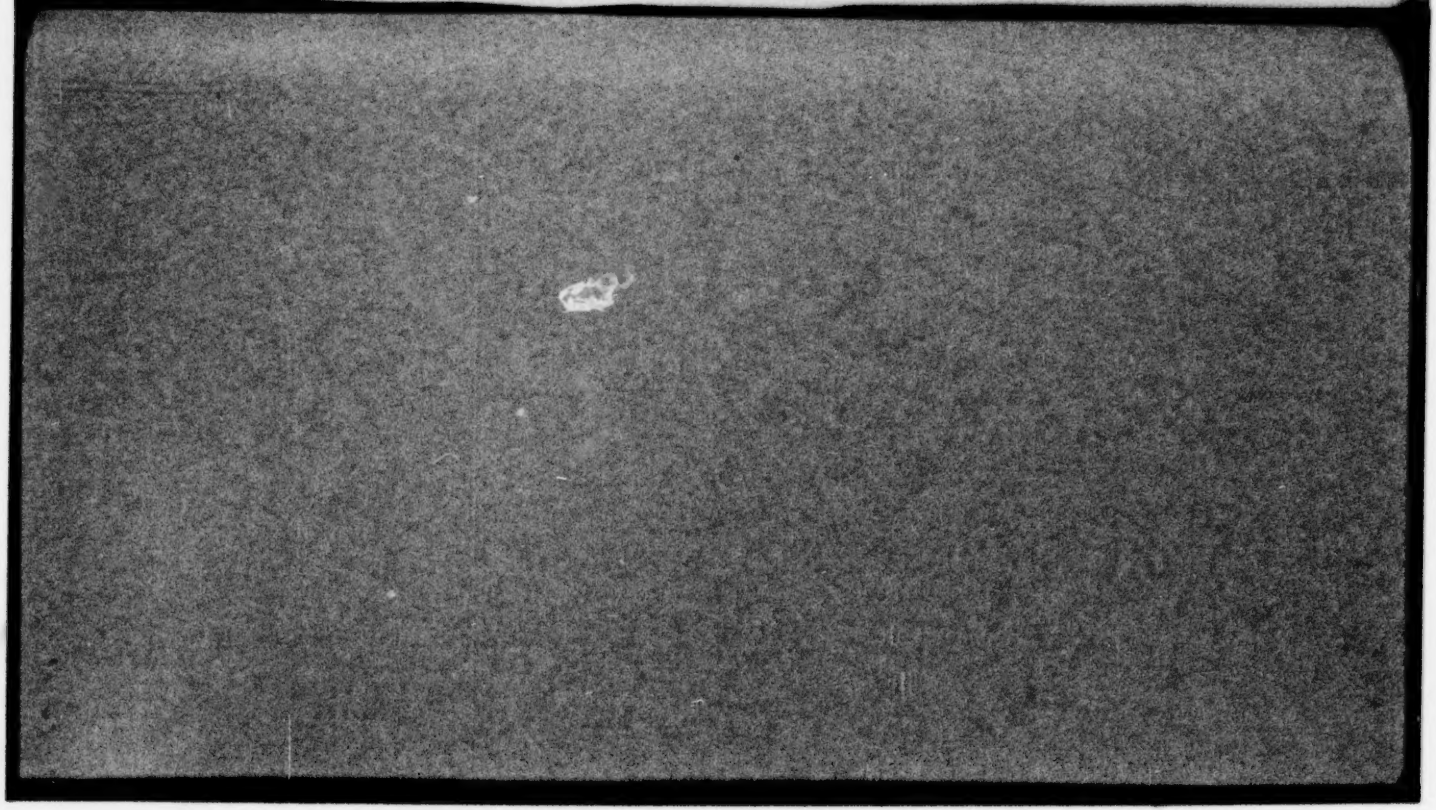
No. [redacted] 293

U. SHERMAN JONES, PETITIONER,

v.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, [redacted] PATTERSON, SHIRLEY A. PATTERSON, ET AL., ETC.

[redacted]



(31,704)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 981

U. SHERMAN JOINES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, NÉE PATTERSON, SHELBY A. PATTERSON, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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TRANSCRIPT OF RECORD

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in Supreme Court of Oklahoma Nov. 5, 1921. Wm. M. Franklin, Clerk.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 12,797.

PETITION IN ERROR.

The said plaintiffs in error, W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, complain of said defendant in error, U. S. Joines, for that the said U. S. Joines, at the May, 1921, term of the District Court of Murray County, State of Oklahoma, recovered a judgment of said court against the said W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, in a certain action then pending in said court, wherein the said W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson were plaintiffs, and the said U. S. Joines was defendant. The original case-made, duly certified and attested, is hereto attached, marked Exhibit "A" and made a part of this petition in error; and the said W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen

Patterson and Ruby E. Patterson aver that there is error in the said record and proceedings in this, to wit:

(1) Said court erred in overruling the motion of plaintiff in error for new trial.

(2) Said court erred in not rendering judgment for the plaintiffs in error on the agreed statement of facts in said cause.

(3) Said court erred in not rendering judgment for the plaintiffs in error on the pleadings and agreed statement of facts.

(4) The court erred in rendering judgment for the defendant in error because under the agreed statement of facts and the law the plaintiffs were entitled to recover.

(5) The court erred in his judgment, because the same was against the evidence and the law.

(6) The court should have found in favor of the plaintiff, because under the evidence and the law the plaintiffs were entitled to recover.

Wherefore, plaintiffs in error pray that said judgment, so rendered, may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of the plaintiffs in error and against the defendant in error upon the agreed statement of facts in said cause, and that the plaintiffs in error be restored to all rights that they have lost by the rendition of such judgment, and for such other relief as to the Court may seem just.

Hayes & McIntosh,
Hatchett & Semple,

Attorneys for Plaintiffs.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

Filed Oct. 1, 1921. Edna Swearengin, Court Clerk, Murray County, Okla. By ....., Deputy.

Filed in Supreme Court of Oklahoma, Nov. 5, 1921. William M. Franklin, Clerk.

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EXHIBIT "A" TO THE PETITION IN ERROR

CASE-MADE.

In the Supreme Court of the State of Oklahoma.

W. M. Patterson et al., Plaintiff in Error, vs. U. S. Joines, Defendant in Error.

Appeal from the District Court Murray County.

Filed in Supreme Court of Oklahoma Nov. 5, 1921. William M. Franklin, Clerk.

Appearances:

Hayes & McIntosh, for plaintiff in error.
Wm. G. Davisson, for defendant in error.

STATEMENT

Of the filing of a petition.

Be it Remembered, That heretofore and on, to wit: the 21st day of February, 1920, the plaintiff in error herein (W. M. Patterson et al.), commenced an action against the defendant in error herein (U. S. Joines) by filing a petition in the office of the court clerk of Murray County, Oklahoma, which said petition is in the words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson and Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, Plaintiffs, vs. U. S. Joines, defendant.—No. 1842.

PETITION.

Comes now the said plaintiffs, W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson, and Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, and show the court that the defendant, U. S. Joines, is a resident of Carter County, State of Oklahoma; and for cause of action against said defendant allege and state:

1. That said plaintiffs are the owners of the title in fee simple to and are entitled to the immediate possession of the following described real property and premises, to wit:

E. ½ of the N. E. ¼ and the E. ½ of the W. ½ of N. E. ¼ and N. W. ¼ of S. W. ¼ of N. E. ¼ and W. ½ of N. W. ¼ of N. E. ¼, and the N. ½ of N. W. ¼ and the N. E. ¼ of S. E. ¼ of Section 31, Township 1 South, Range 1 West, and also the W. ½ of N. W. ¼ of S. E. ¼ of Section 8, Township 2 South, Range 1 West, containing 280 acres, more or less, according to the United States Survey thereof, located and situated in Murray County, State of Oklahoma.

And

The W. ½ of the N. E. ¼ of the N. E. ¼ of Section 27, Township 2 South, Range 6 West, con-

taining 20 acres, more or less, according to the United States Survey thereof, located and situated in Stephens County, State of Oklahoma.

And

The N. ½ of the N. W. ¼ of the N. E. ¼ and the S. W. ¼ of the N. W. ¼ of N. E. ¼ and the S. E. ¼ of S. E. ¼ of Section 12, Township 2 South, Range 2 West of the Indian Base Meridian, located and situated in Carter County, State of Oklahoma, containing 70 acres, more or less, according to the United States Survey thereof.

2. That said defendant is in the possession of and has under his control the possession of said lands and premises hereinabove described, and has had the possession of said lands and premises at all times since the 5th day of July, 1907, and that said plaintiffs have been unlawfully denied the possession, the use and occupancy of said lands and premises since July 5th, 1907.

3. That the title of plaintiffs was acquired in the following manner, to wit: that the above described real property and premises were patented to Emma Patterson, a Mississippi Choctaw Indian of one-eighth blood; that the said Emma Patterson died intestate in what is now Bryan County, State of Oklahoma, in the year 1906; that at the time of the death of Emma Patterson she left surviving her, as her only heirs, her husband, W. M. Patterson, and her children, Doroth A. Patterson, nee McFarland, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson; that the said W. M. Patterson is the owner of a life estate in and to the above described real property and premises; that the said Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson are the owners of the fee simple title in and to said lands and premises, subject to the life estate of W. M. Patterson.

4. That the said defendant has been in the unlawful possession of said lands and premises herein described for the period of twelve years; that the reasonable value of said land and premises per year for said period of time is the sum of five hundred ($500.00) dollars per year, or the total sum of six thousand ($6,000) dollars; that said plaintiffs have been damaged in the sum of six thousand ($6,000.00) dollars by said defendant unlawfully withholding possession of said lands and premises from said plaintiffs for said period of time.

5. That said defendant claims some right, title or interest in and to said described real property adverse to these plaintiffs, which constitutes a cloud on the title of said plaintiffs.

Wherefore, premises considered, plaintiffs pray that the defendant, U. S. Joines, be notified of this suit, and that upon a hearing hereof that said plaintiffs have judgment against said defendant, adjudging that said plaintiffs are the owners of the legal and equitable title in fee simple in and to said afore-described premises, free and clear of all liens, claims and incumbrances; that the defendant has no right, title or interest therein, and that he be barred and enjoined from asserting any right, claim or interest thereon; that the title of plaintiffs be quieted and confirmed, and that plaintiffs have judgment against said defendant for the sum of six thousand ($6,000.00) dollars for the rents and profits on said lands and for cost of suit, and all other equitable relief.

Hayes & McIntosh,
Attorneys for Plaintiffs.

(Upon the back of which appears the following filing endorsement, to wit):

"Filed in office of court clerk of Murray County, Okla., Feb. 21, 1920. Eva Vance, Court Clerk. By Will V. Isaac, Deputy."

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. —No. 12,797.

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STATEMENT

Of the filing of the Praecipe, Issuance of Summons, etc.

That on the same day a praecipe for summons was filed in the office of the court clerk of Murray County, Oklahoma.

That thereafter a summons was issued, directed to the proper officer, commanding him to summon the defendant herein.

That thereafter, and in the proper time and in the proper manner, said summons was duly served and due return made thereof.

STATEMENT

Of the filing of a demurrer by the defendant to the plaintiffs' petition.

Be it Remembered: That heretofore, and on to wit: the 28th day of Feb., 1920, the defendant filed a demurrer to the petition of plaintiffs, which said demurrer is in words and figures as follows, to wit:

IN THE DISTRICT COURT OF MURRAY COUNTY, STATE OF OKLAHOMA.

W. M. Patterson, Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, plaintiffs, vs. U. S. Joines, defendant. No. 1,842.

DEMURRER.

Comes now the defendant, U. S. Joines, and demurs to the petition of the plaintiffs filed herein, and for reason states that the same does not state facts sufficient to constitute a cause of action against this defendant and in favor of the said plaintiffs.

Wm. G. Davisson,
Attorney for Defendant.

(Upon the back of which appears the following filing endorsement, to wit):

Filed, Murray County, Okla., Feb. 28, 1920. Eva Vance, Court Clerk.

STATEMENT

Of the filing of an order of the court overruling demurrer of defendant to the petition of plaintiffs.

Order of the court overruling demurrer of defendant to the petition of plaintiffs, which said order is as follows, to wit:

State of Oklahoma, County of Murray, ss. In the District Court.

W. M. Patterson, plaintiff, vs. U. S. Joines, defendant. No. 1,842.

ORDER OVERRULING DEMURRER.

Now on this 9th day of August, 1920, being a regular court day of the above styled court, comes on for hearing defendant's demurrer to plaintiff's petition, both parties being represented by their attorneys of record:

Whereupon, the court having heard the argument of counsel and being fully advised in the premises, is of the opinion that said demurrer should be overruled, which is accordingly done. To which ruling of the court the defendant at the time excepts, and which exception is by the court allowed.

It is further ordered that defendant be given twenty days in which to file his answer in this cause.

T. B. Swank, Judge.

(Upon the back appears the following filing endorsement, to wit):

Filed in Murray County, Okla., Aug. 16, 1920. Eva Vance, Court Clerk.

STATEMENT

Of the filing of an answer.

That thereafter, and on, to wit: the 9th day of Au-

gust, 1920, the defendant filed answer to the petition herein, which said answer is in words and figures following, to wit:

State of Oklahoma, County of Murray, ss. In the District Court.

W. M. Patterson et al., plaintiffs, vs. U. S. Joines, defendant. No. 1,842.

ANSWER.

Comes now the defendant and for answer to the petition of the plaintiff herein filed, denies both generally and specifically each and every material allegation therein contained except such as are herein admitted.

This defendant specifically denies that the said plaintiffs or any or either of them are the owners of the lands described in plaintiffs' petition, or have the right to the possession thereof.

This defendant admits that he is in possession of said lands and premises, and that he has been in possession thereof at all times since on or about the month of October, 1907.

Defendant further admits that the lands involved in this action were allotted to one Emma Patterson, a one-eighth blood Mississippi Choctaw Indian; that she died intestate in what was then the Central District of Indian Territory, on or about the 14th day of May, 1906, and that at the time of her death she left surviving her Wm. M. Patterson, her husband, and Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby Elnora Patterson, her children.

This defendant denies that the said Wm. M. Patterson, husband of the said Emma Patterson aforesaid, was one of the heirs of the said Emma Patterson, as in said petition charged, or that he was entitled to a life estate in said lands.

He denies that $500.00 per annum was the reasonable rental value of said lands; denies that he has wrongfully detained the said lands from the said plaintiffs, or any or either of them, and denies that they, or either of them, are entitled to recover the sum of $6,000.00 or any other sum as damages.

This defendant admits that the children above named are the heirs of the said Emma Patterson.

Further answering, this defendant says that the lands described in plaintiffs' petition were filed after the death of the said Emma Patterson, by the aforesaid Wm. M. Patterson, her husband, as administrator of her estate, and that subsequent thereto, and between the date of the death of the said Emma Patterson and the 24th day of April, 1907, the said Wm. M. Patterson was appointed guardian of the children above named, all of whom were minors; and that thereafter, and, to wit: on or about the 5th day of October, 1907, after due and legal probate proceedings, duly and regularly had, the said guardian sold and conveyed the said lands to this defendant, and that a copy of said deed of conveyance is hereto attached, marked "Exhibit A," and made part of this answer.

That said defendant has ever since said date been in possession of said lands, and that thereafter, and, to wit: on or about the 5th day of August, 1913, in order to correct certain errors of description in said former deed, a subsequent deed was executed by the said Wm. M. Patterson aforesaid, in favor of this defendant. A copy of said deed is hereto attached, marked "Exhibit B," and made part hereof.

That said conveyances were duly ordered and regularly approved by the probate court having jurisdiction of the said estate, and were in all things sufficient to, and did, convey all of the title of the said heirs of Emma Patterson to this defendant.

Further answering, and by way of estoppel, this

defendant specially pleads that the plaintiff, Wm. M. Patterson, held himself out as guardian of the said minor children aforesaid, and represented to this plaintiff that the said children were the sole heirs of the said Emma Patterson, deceased, and had all of the right, title and interest in her said lands; and that by reason thereof he is now estopped from setting up and claiming any interest in or to the same.

Further specially pleading, this defendant says that if the said plaintiff, Wm. M. Patterson, ever had any right to the lands, and the proceeds accruing from said lands by reason of his alleged life estate therein, that the said action is now barred as to all except the last two years thereof, by the Oklahoma Statute of Limitations, to wit: Section 4655 of the Revised Laws of the State of Oklahoma of 1910.

Further answering, this defendant says that if the said Wm. M. Patterson ever had any right to a courtesy interest in the estate of the said Emma Patterson as against this defendant, that it is now barred by the Arkansas Statute of Limitations in effect in Indian Territory at the time of the said sale, to wit, Section .... of Mansfield's Digest of the Laws of Arkansas.

Further answering, defendant says that plaintiffs' action herein constitutes a collateral attack on the orders and judgment of the probate court in the guardianship sale, under which this defendant claims, and by reason thereof cannot be maintained.

Wherefore, these premises considered, defendant prays that plaintiffs' petition be denied; that they take nothing by reason of their action aforesaid, and that this defendant have judgment for his costs in this behalf expended.

Wm. G. Davisson,
Attorney for Defendant.

State of Oklahoma, County of Carter, ss:

U. S. Joines, being first duly sworn, says that he is the defendant in the above styled cause; that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein stated are true.

U. S. Joines.

Subscribed and sworn to before me this 30th day of March, 1920.

Eva Vance, Court Clerk.
(Seal) By Mable Berridge, Deputy.

GUARDIAN'S DEED.

United States of America, Southern District, Indian Territory, ss:

Now, whereas, William M. Patterson was, on the 27th day of March, A. D. 1907, appointed guardian of the persons and estate of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District, at Durant; and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid, the guardian of the persons and estates of said children.

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother, who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof.

And, whereas, the said William M. Patterson, as the guardian aforesaid of the said minor children, did, on the 24th day of April, 1907, file a written petition in the

United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described for the education, maintenance and support of said minors, the improvement of their estates and for investment purposes, said lands and tenements being situated within said court's jurisdiction:

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition did, on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson, as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held.

And, whereas, the said William M. Patterson, as guardian aforesaid, did, in compliance with and in obedience to said order of court, more than twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, the time, place and terms of sale as stated in the said order.

And, whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid been appointed by said court to appraise said children's interest in said lands and tenements, did, on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises, and then did in writing appraise, under their oath, the right,

title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00).

And, whereas, the said William M. Patterson, as guardian of the aforesaid children, did, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months.

And, whereas, at said time, place and sale U. S. Joines of Ardmore, Indian Territory, bid two thousand ($2,000.00) dollars therefor, which was the highest and best bid then and there offered and made; and the same being more than three-fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson as such guardian aforesaid, and the same having now been paid.

Therefore, be it known to all men by these presents, that I, William M. Patterson, as the guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and of each of them, minors, in consideration of the premises aforesaid and by virtue of my power and authority as guardian of said minors and their estates as aforesaid, and for and in consideration of the said sum of two thousand ($2,000.00) dollars cash in hand paid me by the said U. S. Joines, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and do by these presents hereby grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns, all the right, title and interest of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and of each of them, in and

to the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west.

Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two east, the same being the identical lands petitioned to be sold, ordered to be sold, appraised and notices of sale posted, and sold, as aforesaid.

Together with, and including all the rights, privileges, appurtenances and improvements situated thereon, connected therewith, or in anywise appertaining thereunto.

To have and to hold the same unto the said U. S.

Joines, his heirs and assigns, in quiet and peaceable possession and in fee simple, forever.

Witness my hand and signature as such guardian of said minor children this the 5th day of October, 1907.

W. M. Patterson,

As the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as aforesaid.

"Exhibit A."

GUARDIAN'S DEED.

United States of America, State of Oklahoma, County of Bryan, ss:

Now, whereas, William M. Patterson was, on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District at Durant, and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid, the guardian of the persons and estates of said children, and;

Whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof; and,

Whereas, the said William M. Patterson, as the guardian aforesaid of the said minor children, did on the

24th day of April, 1907, after having previously given due, legal and timely notice of his intention to make application therefor, file a written petition in the United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvements of their estates and for investment purposes, said lands and tenements being situated within said court's jurisdiction; and,

Whereas, the said United States Court, in the Southern District of the Indian Territory, at Ardmore, acting on said petition, did on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson, as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements, at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and,

Whereas, the said William M. Patterson, as guardian aforesaid, did in compliance with and in obedience to said order of court, more than twenty days before the *fifth* day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, of the time, place and terms of sale as stated in the said order; and,

Whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid, been appointed by said court to appraise said children's interest in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required

in this matter, then viewed the said premises and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00); and,

Whereas, the said William M. Patterson, as guardian of the aforesaid children, did on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described at public outcry to the highest bidder on a credit of three months; and,

Whereas, at said time, place and sale U. S. Jones of Ardmore, Indian Territory, bid two thousand ($2,000.00) dollars therefor, which was the highest and best bid then and there offered and made and the same being more than three-fourths of the said appraised value therefor, was then and there accepted by the said William M. Patterson, as such guardian aforesaid, and the same having now been paid; and,

Whereas, the said William M. Patterson, guardian as aforesaid, did on the 8th day of October, 1907, duly file his return herein showing that he had sold the said lands to the said U. S. Jones as aforesaid for the sum of two thousand ($2,000) dollars and showing all of his acts done under said order of sale, and asking that said sale be confirmed; and,

Whereas, the County Court of Carter County, State of Oklahoma, being the successor of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern District of the Indian Territory sitting at Ardmore, could have done, did on the 14th day of July,

1913, make an order confirming said sale and directing conveyance to be executed by the said William M. Patterson, as guardian aforesaid, to the said U. S. Joines a certified copy of which order of confirmation was recorded in the office of the register of deeds of Carter County on the 19th day of July, 1913, in Book Misc. Records 15 at page 27 thereof, and also in the office of the register of deeds of Murray Co. on the 16th day of July, 1913, in Book Misc. Records 6 at p. 1, within which said two counties the said lands are situated and which said order of confirmation now on file and of record in said two counties and which said records thereof in said two register of deeds offices are hereby referred to and made a part of this indenture.

Now, therefore, the said William M. Patterson, as guardian of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, pursuant to the order last aforesaid of said County Court of Carter County, Oklahoma, and for and in consideration of the sum of two thousand dollars ($2,000.00) cash in hand paid by the said U. S. Joines to the said William M. Patterson, guardian as aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns forever, all the right, title and interest and estate of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, in and to all the certain lots, pieces or parcels of land situated and lying and being in the said Counties of Carter and Murray in the State of Oklahoma, and bounded and particularly described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the south-

east quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west. Also west half of northwest quarter of southeast quarter of Section 8, Township 2 South, Range 1 West; also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest of the northwest quarter of the northeast quarter of section twelve, township two south, range two (2) west.

together with the tenements, herditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining.

To have and to hold all and singular the above mentioned and described premises unto the said U. S. Joines, his heirs and assigns, forever.

In witness whereof, the said William M. Patterson, as guardian aforesaid, has hereunto set his hand this the 5th day of Aug., 1913.

W. M. Patterson,

As Guardian Aforesaid of said Minors.

Signed and delivered in the presence of E. P. Williams.

"Exhibit B."

(Upon the back of which appears the following filing endorsement, to wit):

"Filed in open court in the District Court of Murray County, Aug. 9, 1920. Eva Vance, Court Clerk."

Statement

Of the filing of reply of plaintiffs.

That thereafter, and on, to wit: Sept. 27, 1920, the plaintiffs filed a reply to the answer herein, which said reply is in words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma:

W. M. Patterson et al., plaintiffs, vs. U. S. Joines, defendant. No. 1,842.

Reply of Plaintiffs.

Comes now the plaintiffs, W. M. Patterson, Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, and replying to the answer of the defendant, U. S. Joines, filed herein denies each, every and all the material allegations contained in the answer of said defendant, except that part of said answer which admits certain allegations contained in the petition.

The plaintiffs further deny that on or about the 5th of October, *1917*, W. M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, sold and conveyed the said lands sued for herein to this defendant by due and legal probate proceedings duly and regularly had; deny that the United States District Court of the the Southern District of Indian Territory at Ardmore

to sell the lands of said minors above named, but alleges that on or about the ..... day of April, 1907, the said W. M. Patterson, as guardian of the above named minors, filed his petition in the United States District Court for the Southern District of Indian Territory at Ardmore for the sale of the lands described in the petition herein, a copy of which petition is hereto attached, made a part hereof and marked Exhibit "A"; that thereafter on the 2nd day of May, 1907, said petition came on for hearing before the court and said lands were ordered sold by said guardian, a copy of which order of sale is hereto attached, made a part hereof and marked Exhibit "B"; that thereafter on the 8th day of October, 1907, the said W. M. Patterson filed in said court a purported report of sale of said lands, which said purported report of sale is hereto attached, made a part hereof and marked Exhibit "C"; that thereafter on the 14th day of July, 1913, the County Court of Carter County, State of Oklahoma, entered its pretended order confirming sale of real estate of the lands set out in the petition of the said U. S. Joines; that the said petition praying for an order of sale, the order of sale based thereon, the report of sale, are all void and of no force and effect for the reason that the United States District Court for the Southern District of Indian Territory was without authority of law to sell the lands belonging to minors, or any part thereof or interest therein, unless such sale was made in conjunction with adult heirs in the sale of inherited lands; that there was no adult heirs of the said Emma Patterson, the allottee of the lands sued for herein, joining in the sale by said minors; that the United States District Court had no jurisdiction to order the sale of said lands unless there were both adult and minor heirs of such decedent, and then only were the minors permitted, under the law to join in a sale of such lands by such guardian; that said purported sale by said guardian to the said defendant was never confirmed by any court until the 14th day of July, 1913; and that said purported

order of confirmation is void and of no force and effect and no title, based on said purported sale, was ever passed or conveyed to said defendant, a copy of said purported order confirming sale is hereto attached, made a part hereof and marked Exhibit "D."

Said plaintiffs further deny that the Arkansas Statutes of Limitation, in effect in Indian Territory at the time of the purported sale of said lands, is of any force or effect herein at this time; deny there has ever been any legal sale of said lands; deny that said defendant has any right, title, claim or interest in and to said lands by reason of any purported sale in probate court or otherwise.

Wherefore plaintiffs pray that they have judgment against said defendant as prayed for in the petition herein.

Hayes & McIntosh,

Attorneys for Plaintiffs.

In the United States Court in the Indian Territory, Southern District, Indian Territory, at Ardmore.

In the matter of the application of William M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, as their legal guardian, for an order of sale of the lands inherited by them from their deceased mother, Emma Patterson. Exhibit "A."

Petition and Complaint of Wm. M. Patterson, as Guardian of Indian Minors for the Sale of Inherited Lands, the Said Minors Being Indian Citizens.

Come now your petitioner, Wm. M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson,

Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as their natural and legal guardian, and respectfully states that they are minor children, aged respectively 13, 10, 7, 3 and 1 years; and that they reside and live in the Central District of the Indian Territory, about seven miles northwest of the City of Durant, Indian Territory, and that the said William M. Patterson, their said father and legal guardian, resides at the same place and with them; and that the said William M. Patterson was duly and legally appointed and qualified in the United States Court in the Indian Territory, Central District aforesaid, at Durant, as their legal and lawful guardian, which appointment and qualification has been duly approved by the said court.

Petitioner states that same minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, by the said or any other marriage, and that they are the only heirs of the said Emma Patterson whatsoever.

He states further that they are citizens of the Choctaw Nation by blood being one-eighth Choctaw by blood and seven-eighths white, and that they have, except the two youngest ones, selected and taken in severalty their allotments of the Choctaws and Chickasaws; that their said mother, Emma Patterson, was, at the time of and prior to her death, which occurred on the 14th day of May, 1906, a citizen of said Choctaw Nation by blood, and that she was at the time of her said death entitled to take and select an allotment as aforesaid, and that her husband, the said William M. Patterson, who, on the ____ day of March, 1907, was duly appointed and qualified in said court at Durant, Indian Territory, as administrator of said estate of said Emma Patterson, selected and took in allotment and filed upon in her name, the following described lands located and situated in the Southern District of the Indian Territory, which are

wild, rocky, uninclosed mountain lands, the same being situated within the jurisdiction of this honorable court, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of the southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of the same section, township and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also the southeast quarter of the southeast quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northeast quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range.

Petitioner further states that said minors are the sole and only heirs of their said mother, Emma Patterson, and that they have inherited the above described lands in fee simple from her; that they, and each of

In the United States Court in the Indian Territory, Southern District, at Ardmore.

In the matter of the petition of William M. Patterson, as the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, for an order for the sale of lands inherited by said minors from their deceased mother, Emma Patterson. Exhibit "B."

ORDER OF COURT GRANTING THE PETITION FOR SALE OF INHERITED INDIAN LANDS.

This cause coming on to be heard in open court on this the 2nd day of *May*, 1907, on the petition filed herein by William M. Patterson, as the legal guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors, asking for an order of court for the sale of the hereinafter mentioned lands and premises which are alleged to have been inherited by said minors from their deceased mother, Emma Patterson, and it appearing to the court that the said William M. Patterson is the legal guardian of said minors; that they are the owners of the lands hereinafter mentioned and set forth, having inherited the same from their mother, Emma Patterson, deceased; that the said Emma Patterson and the same minors are citizens of the Choctaw Nation by blood, not full blood, but of mixed blood, and that the hereinafter mentioned lands and premises have heretofore been allotted to their said mother, Emma Patterson, as her allotment of same; that the said minors have no personal property, but only their allotments and said lands so inherited, and that all of said lands are wild and uncultivated and non-revenue producing; that said children should be educated and their maintenance provided for and their lands made revenue producing; that their said father, William M. Patterson, is practically insolvent, and unable to properly provide out of his own funds for their education and maintenance, or to improve their

lands so as to make the same revenue producing; that it would be for the best interest of said minors that the said lands be sold and the funds derived therefrom be applied to their education, maintenance, improvements of their other lands and for investment in a way to produce an income and revenue; that all of said matters have heretofore been passed upon by the clerk of this court under directions of the court, and that said clerk has reported in writing that said lands should be so sold, and that the order prayed for should be granted.

And the court being fully advised in the premises having reached the same conclusion;

It is, therefore, ordered and decreed by the court that the said William M. Patterson, as the guardian of said minors aforesaid, shall sell and convey all of said minors' interest in and to the following described tracts and parcels of land located and situated in the Southern District of the Indian Territory as follows, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of the same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also south-

east quarter of the southeast quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south and range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northwest quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range; the same being the identical lands set forth in said petition.

That the sale of same shall be, in all things, conducted in accordance with law and the order of this court; that D. E. Booker, Guy T. Ledbetter and W. H. Wimberly, who are disinterested persons, are hereby appointed appraisers, and they shall take the oath prescribed by law and conform in the appraisement, after viewing the said lands, as provided for by law; that the said William M. Patterson, as guardian, shall put up, or cause to be put up, notices of said sale at least twenty days before the date of sale thereof at ten of the most public places in the 21st recording district of the Southern District of the Indian Territory, particularly describing therein the lands to be sold, the time and place of sale and terms thereof; that said sale shall be in a 3 months credit and shall take place in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and said sale shall be at public outcry to the highest bidder, between the hours of ten o'clock forenoon and four o'clock afternoon, July 5th, 1907.

It is further ordered that the said guardian shall execute a good and sufficient bond with not less than two sureties, to be approved by the clerk of this court, in double the sums the lands shall be appraised at, to conduct the sale with fidelity to the interest of his wards, and

faithfully to account for the proceeds of the sale according to law and as the order of this court may require.

In the United States Court in the Indian Territory, Southern District at Ardmore.

In the matter of the petition of William M. Patterson as the guardian of the person and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors. Exhibit "C."

REPORT OF SALE MADE BY GUARDIAN.

Comes now petitioner, William M. Patterson, as the legal guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and reports to this Honorable Court that he, in obedience to the orders of this court made and entered on the 2nd day of May, A. D. 1907, wherein and whereby petitioner was authorized, ordered and directed to sell at public outcry to the highest bidder on a credit of three months, on July 5th, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the court house building in the City of Ardmore, Indian Territory, the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, the northwest quarter of the southwest quarter of the northeast quarter of section thirty one, township one south, range one west; also the south half of the southeast quarter of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quar-

ter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west.

Your petitioner duly advertised and published the said sale by posting written notices thereof in ten of the most public places in the twenty-first recording district, Southern District, Indian Territory, for more than twenty days continuously before the said date of sale, July 5th, 1907, wherein a particular description of the lands and tenements to be sold was given, the time, place and terms of sale, in which said notices it was stated that the interest to be sold was the interest of the said children therein, which was stated to be the fee simple title thereof, which was in no wise incumbered whatsoever. Prior to the said date of sale, to wit: On the 18th day of June, 1907, D. E. Booker, Guy T. Lellsetter and Will H. Wimberly, who had theretofore been appointed appraisers by this court to appraise said lands and tenements, took the prescribed oath required in such cases, then viewed the said lands and premises, and thereafterwards appraised the same, and made and submitted a written report of their appraisement, which report is hereto attached and made a part hereof. They appraised the said lands and tenements to be two thousand one hundred dollars ($2,100.00), all of which was appraised as the interest of said minor wards mentioned hereinbefore. On the day of sale prescribed by said order; that is, on the fifth day of July, 1907, your petitioner offered the in-

terest of said minors in said lands and tenements for sale at public outcry to the highest bidder on a credit of three months in front of the building in which the United States Court is held in the City of Ardmore, Indian Territory, between the hours of ten o'clock forenoon and four o'clock afternoon. At said time, place and sale, U. S. Joines bid for same the sum of $2,000.00, which said bid of said U. S. Joines for said amount, $2,000.00 being the highest and best bid was then and there accepted by petitioner.

The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises, that is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.

Your petitioner further states that he endeavored, in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible; that he neither omitted, neglected or left undone anything he could do to further the interests of his said wards in said sale; that the lands, having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.

Your petitioner further states that he has executed and delivered to the said U. S. Joines a deed conveying to him the interests of his said wards in said lands and tenements, a copy of which is hereto attached and made a part hereof; and he asks that said deed be approved and confirmed, so as to vest in said U. S. Joines all the right, title and interest of his wards in said lands and tenements in accordance with the said sale aforesaid.

Petitioner further states that he was not the purchaser of said ward's interest in said lands and tenements, or of any part thereof, and that they

were not purchased for his use or benefit, and that he is not in any way whatever interested in the purchase thereof.

W. M. Patterson,

As the Guardian of the Persons and Estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, Minors.

Subscribed and sworn to before me this the 5th day of October, 1907.

(Seal.)

S. H. Kyle,
Notary Public.

Filed Oct. 8, 1907, C. M. Campbell, Clerk.

State of Oklahoma, Carter County, ss. In county Court.

In the Matter of the Estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, Minors. Exhibit "D."

ORDER CONFIRMING SALE OF REAL ESTATE BY GUARDIAN.

Now, on this 14th day of July, 1913, there coming on for hearing the return of sale made by William M. Patterson, as the guardian of the estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, Thos. Norman as attorney for said guardian, and no one appearing to object to the confirmation of the sale made by said guardian, nor any motion or objection there to be filed herein by any one, the order of said sale having been made on the 2nd day of May, 1907, by the United States Court in and for the Southern District of the Indian Territory sitting at Ardmore therein, within the limits of which is now Carter County, Oklahoma, which

said return was filed herein Oct. 8, 1907, and the Court having examined said return, and having heard and considered the evidence of witnesses offered in support of said return, it being the successor of the said United States Court in the Indian Territory sitting at Ardmore therein for the purpose hereof and being fully advised in the premises finds:

That in pursuance of said Order of Sale, said William M. Patterson as such guardian on the 5th day of July, 1907, sold the portion of real estate of said estate described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the Southeast quarter, the east half of the southwest quarter of the northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of the southwest quarter of the northeast quarter of Section thirty-one, township one south, range one west, also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of Section seventeen, township one south, range one east. Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west. Also the northwest quarter of the northwest quarter of the northeast quarter of Section twenty, township one south, range one east. Also the southeast quarter of the southeast quarter; the north half of the northwest quarter of the northeast quarter and the southwest quarter of the northwest quarter of the northeast quarter of Section 12, township two south, range two west.

at private sale to U. S. Joines upon the following terms, to wit:

For the sum of $2,000.00, as follows; credit of three months, which has now been paid.

That said sale was made after due notice as prescribed by said Order of Sale; that said prchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten (10) per cent, exclusive of the expense of a new sale cannot be obtained, and that the said William M. Patterson as such guardian in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided and as by said order of sale required and directed.

It is therefore ordered, adjudged and decreed by the Court, that the said sale be, and the same is hereby confirmed and approved and declared valid, and the said William M. Patterson, as such guardian is directed to execute to said purchaser proper and legal conveyance of said real estate.

(Seal) W. W. Freeman,

County Judge.

Filed July 14, 1913.

(Upon the back of which appears the following filing endorsement, to wit.):

"Filed in the office of Court Clerk of Murray County, Okla. Sept. 27, 1920. Eva Vance-Masters, Court Clerk. By Mabel Berridge, Deputy."

STATEMENT.

Of the filing of an amended answer.

That thereafter, and on, to wit: the 18th day of Dec.,

1920, the defendant filed an amended answer to the petition herein, which said amended answer is in words and figures following, to wit:

State of Oklahoma, County of Bryan, ss. In the District Court.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Amended Answer.

Comes now the defendant, leave of court and consent of counsel for plaintiff having been first obtained, and files this his amended answer herein and for answer to the petition of the plaintiff herein filed, denies both generally and specifically each and every material allegation therein contained except such as are herein admitted.

This defendant specifically denies that the said plaintiffs or any or either of them are the owners of the lands described in plaintiff's petition, or have the right to the possession thereof.

This defendant admits that he is in possession of said lands and premises, and that he has been in possession thereof at all times since on or about the month of October, 1907.

Defendant further admits that the lands involved in this action were allotted to one Emma Patterson, a one-eighth blood Mississippi Choctaw Indian; that she died intestate in what was then the central District of Indian Territory, on or about the 14th day of May, 1906, and that at the time of her death she left surviving her, Wm. M. Patterson, her husband, and Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby Elnora Patterson, her children.

This defendant denies that the said Wm. M. Patterson, husband of the said Emma Patterson, aforesaid was

one of the heirs of the said Emma Patterson, as in said petition charged, or that he was entitled to a life estate in said lands.

He denies that $500.00 per annum was the reasonable rental value of said lands; denies that he has wrongfully detained the said lands from the said plaintiffs or any or either of them, and denies that they or either of them are entitled to recover the sum of $6,000.00, or any other sum as damages.

This defendant admits that the children above named are the heirs of the said Emma Patterson.

Further answering, this defendant says that the lands described in plaintiff's petition were filed after the death of the said Emma Patterson, by the aforesaid Wm. M. Patterson, her husband, as administrator of her estate, and that subsequent thereto, and between the date of the death of the said Emma Patterson and the 24th day of April, 1907, the said Wm. M. Patterson was appointed guardian of the children above named, all of whom were minors; and that thereafter, and to wit, on or about the 5th day of October, 1907, after due and legal probate proceedings duly and regularly had, the said guardian sold and conveyed the said lands to this defendant, and that a copy of said deed of conveyance is hereto attached, marked "Exhibit A," and made a part of this answer.

That said defendant has ever since said date been in possession of said lands, and that thereafter and to wit, on or about the 5th day of August, 1913, in order to correct certain errors of description in said former deed, a subsequent deed was executed by the said Wm. M. Patterson aforesaid, in favor of this defendant. A copy of said deed is hereto attached, marked Exhibit "B," and made a part hereof.

That said conveyances were duly and regularly ordered and approved by the Probate Court having

jurisdiction of the said estate and were in all things sufficient to and did convey all of the title of the said heirs of Emma Patterson to this defendant, and that copies of the Petition for Sale, Order of Sale, Report and Confirmation of Sale are hereto attached marked respectively "Exhibits C, D, E, and F", and made a part of this answer.

Further answering, and by way of estoppel, this defendant specially pleads that the plaintiff, Wm. M. Patterson, held himself out as guardian of the two said minor children aforesaid and represented to this plaintiff that the said children were the sole heirs of the said Emma Patterson, deceased, and had all of the right, title and interest in her said lands; and that by reason thereof, he is now estopped from setting upon and claiming any interest in or to the same.

Further specially pleading, this defendant says that if the said plaintiff Wm. M. Patterson ever had any right to the lands, and the proceeds accruing from said lands by reason of his alleged life estate therein, that the said action is now barred as to all except the last two years thereof by the Oklahoma Statute of Limitations, to wit: Section 4655 of the Revised Laws of the State of Oklahoma of 1910.

Further answering this defendant says that the said Wm. M. Patterson was a white man; that he was not enrolled as a member of either of the Five Civilized Tribes of Indians; that he was not a citizen of either of said tribes and that by reason thereof, he never was entitled to a curtesy interest in the lands of the said Emma Patterson.

Further answering, this defendant says that if the said Wm. M. Patterson ever had any right to a curtesy interest in the estate of the said Emma Patterson as against this defendant that it is now barred by the Arkansas Statute of Limitations in effect in Indian Territory at the time of sale of said lands, to wit:

Section — of Mansfield's Digest of the Laws of the State of Arkansas.

Further answering, defendant says that if the plaintiff in this action or any or either of them, ever had any right to maintain an action for the recovery of the lands herein mentioned and described, or any portion thereof, that said rights are now barred by the Oklahoma Statute of Limitation, to wit: Sections 4655, 4656 and 6583 of the Revised Laws of Oklahoma of 1910.

Further answering, defendant says that plaintiffs' action herein constitutes a collateral attack on the orders and judgments of the Probate Court in the guardianship sale under which defendant claims, and by reason thereof cannot be maintained.

Wherefore, these premises considered, defendant prays that plaintiffs' petition be denied and that plaintiff take nothing by reason of the action aforesaid, and that this defendant have judgment confirming his title to the said lands and forever barring, enjoining and restraining the said plaintiffs, and each of them from claiming or asserting any right, title or interest in and to the same.

Wm. G. Davisson,
Attorney for Defendant.

State of Oklahoma, County of Carter, ss:

U. S. Joines, being first duly sworn, says that he is the defendant in the above styled cause; that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein stated are true.

U. S. Joines.

Subscribed and sworn to before me this 18th day of December, 1920.

(Seal)

Louise Wall,
Notary Public.

My commission expires .....

Guardian's Deed.

United States of America, Southern District, Indian Territory, ss:

Now, whereas, William M. Patterson was on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District, at Durant; and has duly qualified as such guardian of said minors and is now and has been at all times subsequent to said date aforesaid, the guardian of the persons and estates of said children.

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof;

And, whereas, the said William M. Patterson, as the guardian aforesaid of the said minor children, did on the 24th day of April, 1907, file a written petition in the United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvement of their estates and for investment purposes, said lands and tenements being situated within said court's jurisdiction;

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition did on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson as guardian aforesaid of the said children to

sell and convey said children's right, title and interest in and to the said lands and tenements at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held;

And, whereas, the said William M. Patterson as guardian aforesaid, did in compliance with and in obedience to said order of court, more than twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, the time, place and terms of sale as stated in the said order;

And, whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid been appointed by said court to appraise said children's interest in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required in this matter then viewed the said premises, and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00);

And, whereas, the said William M. Patterson, as guardian of the aforesaid children, did on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months.

And, whereas, at said time, place and sale U. S. Joines of Ardmore, Indian Territory, bid two thousand

($2,000.00) dollars therefor, which was the highest and best bid then and there offered and made; and the same being more than three-fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson, as such guardian aforesaid; and the same having now been paid;

Therefore, be it known to all men by these presents, that I, William M. Patterson, as the guardian of the persons and estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and each of them, minors, in consideration of the premises aforesaid and by virtue of my power and authority as guardian of said minors and their estates as aforesaid, and for and in consideration of the said sum of two thousand ($2,000.00) dollars cash in hand paid me by the said U. S. Joines, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and do by these presents hereby grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns, all the right, title and interest of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and of each of them, in and to the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty one, township one south, range one west.

Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the south-

west quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the [illegible]east quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two east, the same being the identical lands petitioned to be sold, ordered to be sold, appraised and notices of sale posted, and sold, as aforesaid.

Together with and including all the rights, privileges, appurtenances and improvements thereon situated, connected therewith, or in anywise appertaining thereunto.

To have and to hold the same unto the said U. S. Joines, his heirs and assigns, in quiet and peaceable possession and in fee simple forever.

Witness my hand and signature as such guardian of said minor children this the 5th day of October, 1907.

W. M. Patterson,

As the Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as aforesaid.

Exhibit "A."

Guardian's Deed.

United States of America, State of Oklahoma, County of Bryan, ss.

Now, Whereas, William M. Patterson, was, on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District at Durant, and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid the guardian of the persons and estates of said children, and,

Whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother, who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof, and,

Whereas, the said William M. Patterson, as the guardian aforesaid, of the said minor children, did, on the 24th day of April, 1907, after having previously given due, legal and timely notice of his intention to make application therefor, file a written petition in the United States Court in the Indian Territory, Southern District, at Ardmore, duly verified, praying for an order of court, authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvements of their estates and for investment purposes, said lands and tenements being situated within said Court's jurisdiction, and,

Whereas, the said United States Court, in the Southern District of the Indian Territory, at Ardmore,

acting on said petition, did on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson, as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements, at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and,

Whereas, the said William M. Patterson, as guardian aforesaid, did on compliance with and in obedience to said order of Court more than twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements of the time, place and terms of sale as stated in the said order; and,

Whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore, in said order aforesaid, been appointed by said Court to appraise said children's interest in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises, and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be Two Thousand One Hundred Dollars ($2,100.00); and,

Whereas, the said William M. Patterson, as guardian of the aforesaid children, did on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public

outcry to the highest bidder on a credit of three months; and,

Whereas, at said time, place and sale, U. S. Joines of Ardmore, Indian Territory, bid two thousand ($2,000.00) dollars therefor, which was the highest and best bid then and there offered, and made, and same being more than three-fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson, as such guardian aforesaid, and the same having now been paid, and,

Whereas, the said William M. Patterson, guardian as aforesaid, did on the 8th day of October, 1907, duly file his return herein showing that he had sold the said lands to the said U. S. Joines as aforesaid for the sum of Two Thousand ($2,000.00) Dollars, and showing all of his said acts done under said order of sale, and asking that said sale be confirmed; and,

Whereas, the County Court of Carter County, State of Oklahoma, being the successor of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern district of the Indian Territory, sitting at Ardmore, could have done, did on the 14th day of July, 1913, make an order confirming said sale and directing conveyance to be executed by the said William M. Patterson, as guardian aforesaid, to the said U. S. Joines, a certified copy of which order of confirmation was recorded in the office of the Register of Deeds of Carter County on the 19th day of July, 1913, in Book Misc. Records 15 at page 27 thereof, and also in the office of the Register of Deeds of Murray County, on the 16th day of July, 1913, in Book Misc. Records 6, at page 1, within which said two counties the said lands are situated and which said order of confirmation now on file and of record in said two counties and which said records thereof in said two register of deeds offices are hereby referred to and made a part of this indenture.

Now, Therefore, the said William M. Patterson, as guardian of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, pursuant to the order last aforesaid of said County Court of Carter Co., Okla., and for and in consideration of the sum of Two Thousand Dollars ($2,000.00) cash in hand paid by said U. S. Joines to the said William M. Patterson, guardian, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns forever, all the right, title and interest and estate of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors, as aforesaid, in and to all the certain lots, pieces or parcels of land situated and lying and being in the said counties of Carter and Murray, in the State of Oklahoma, and bounded and particularly described as follows, to wit:

The North half of the Northwest quarter, the North half of the Northeast quarter, the Southeast quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter, the East half of the Southwest quarter of the Northeast quarter, and the Northwest quarter of the Southwest quarter of the Northeast quarter of Section Thirty-one, Township One South, Range One West. Also W½ of NW¼ of SE¼ of Sec. 8, Twp. 2 South, Range 1 West. Also the South half of the Southeast quarter of the Southeast quarter, the South half of the Southwest quarter of the Southeast quarter, the Northwest quarter of the Southwest of the Southeast quarter, and the Southeast quarter of the Southeast quarter of the Southwest quarter of Section Seventeen, Township One South, Range One East; also the Northwest quarter of the Northwest quarter of the Northeast quarter of Section Twenty, Township One South, Range One East. Also

the Southeast quarter of the Southeast quarter, the North half of the Northwest quarter of the Northeast quarter and the Southwest of the Northwest quarter of the Northeast quarter of Section Twelve, Township Two South, Range Two (2) West,

together with the tenements, hereditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining.

To have and to hold all and singular the above mentioned and described premises unto the said U. S. Joines his heirs and assigns, forever.

In Witness Whereof, the said William M. Patterson, as guardian aforesaid, has hereunto set his hand this the 5th day of Aug., 1913.

W. M. Patterson,

As Guardian aforesaid of said minors.

Signed and delivered in the presence of
E. P. Williams.

Exhibit "B."

"EXHIBIT C."

In the United States Court in the Indian Territory, Southern District, Indian Territory, at Ardmore.

In the Matter of the Application of William M. Patterson, as Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, as their legal guardian, for an order of sale of the lands inherited by them from their deceased mother, Emma Patterson.

PETITION AND COMPLAINT OF WM. M. PATTERSON AS GUARDIAN OF INDIAN MINORS FOR THE SALE OF INHERITED LANDS, THE SAID MINORS BEING INDIAN CITIZENS.

Come now your petitioner, Wm. M. Patterson, as Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as their natural and legal guardian, and respectfully states that they are minor children aged respectively 13, 10, 7, 3, and 1 year; and that they reside and live in the Central District of the Indian Territory about seven miles northwest of the City of Durant, Indian Territory, and that the said William M. Patterson, their said father and legal guardian, resides at the same place and with them; and that the said William M. Patterson was duly and legally appointed and qualified in the United States Court in the Indian Territory, Central District aforesaid, at Durant, as their legal and lawful guardian, which appointment and qualification has been duly approved by the said court.

Petitioner states that said minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, by the said or any other marriage, and that they are the only heirs of the said Emma Patterson whatsoever.

He states further that they are citizens of the Choctaw Nation by blood, being one-eighth Choctaw by blood, and seven-eighths white, and that they have, except the two youngest ones, selected and taken in severalty their allotments of the Choctaws and Chickasaws; that their said mother, Emma Patterson, was at the time of and prior to her death, which occurred on the 14th day of May, 1906, a citizen by blood of said Choctaw Nation, and that she was at the time of her said death entitled to take and select an allotment as aforesaid, and that her husband, the said William M.

Patterson, who on the — day of March, 1907, was duly appointed and qualified in said Court at Durant, Indian Territory, as administrator of said estate of said Emma Patterson, selected and took in allotment and filed upon in her name, the following described lands located and situated in the Southern District of the Indian Territory, which are wild, rocky, uninclosed mountain lands, the same being situated within the jurisdiction of the Honorable Court, to wit:

The North half of the Northwest quarter of Section 31, Township One South, Range One West; also the North half of the Northeast quarter of same section, township and range; also the Southeast quarter of the Northeast quarter of same Section, Township and Range; also the Northeast quarter of the Southeast quarter of same Section, Township and Range; also the East half of the Southwest quarter of the Northeast quarter of same Section, Township and Range; also the Northwest quarter of the Southwest quarter of the Northeast quarter of same Section, Township and Range; also the West half of the Northwest quarter of the Southeast quarter of Section Eight, Township Two South, Range One West; also the South half of the Southeast quarter of the Southeast quarter of Section Seventeen, Township One South, Range One East; also the South half of the Southwest quarter of the Southeast quarter of the same Section, Township and Range; also the Northwest quarter of the Southwest quarter of the Southeast quarter of same Section, Township and Range; also the Southeast quarter of the Southeast quarter of the Southwest quarter of same Section, Township and Range; also the Northwest quarter of the Northwest quarter of the Northeast quarter of Section Twenty, Township One South, Range One East; also the Southeast quarter of Southeast quarter of Section Twelve, Township

Two South, Range Two West; also the North half of the Northwest quarter of the Northeast quarter of same Section, Township and Range; also the Southwest quarter of the Northwest quarter of the Northeast quarter of same Section, Township and Range.

Petitioner further states that said minors are the sole and only heirs of their said mother, Emma Patterson, and that they have inherited the above described lands in fee simple from her; that they and each of them is entitled to an allotment of the lands of said tribes or nations, and that the three oldest have already selected and filed upon the same, and that the two youngest intend to, and will in a short time select and file upon lands for their allotments of same; that said minors have no property whatever except the aforesaid lands selected and filed as their allotments and such funds as may hereafter be distributed to them from the funds of said tribes or nations; that their said father, William M. Patterson, is a citizen of the United States, and not a citizen of either of the Five Civilized Tribes, and that he is practically insolvent, not owning exceeding five hundred dollars worth of property, including household effects; that the three oldest children now need to be educated, but that their said father is unable to so educate them or give them any educational advantages whatever; that the lands selected and filed upon by the three oldest children aforesaid and that intended to be filed upon by the two youngest, are wild lands and uncultivated, and that the same produce practically no revenue whatever out of which said children may be educated; that they have no funds, money or property with which to improve their said wild lands and reduce them to a state of cultivation, fence them, build houses thereon, and make them revenue producing; that it is for the interest and benefit of the said minors that the said inherited lands above described be sold under the orders of this Court, that

the funds derived therefrom be used to educate the said minors, and to be invested in the improvements of their own individual allotments and in such other way as appears proper and right, and to their best interests.

Wherefore, considering the above, petitioner prays for an order of this Honorable Court for the sale of said lands, in compliance with the law, and for the investment and use of the proceeds for the education of said minors and the improvements of their said lands, and for any and all other relief that they in equity and good conscience be entitled to.

Thos. Norman,

Attorney for Petitioner.

I, William M. Patterson, do solemnly swear that the facts and statements contained and set forth in the above petition are true.

W. M. Patterson.

Sworn to and subscribed before me this the — day of ————, 1907.

Luther D. Davis,

(Seal) Notary Public.

Filed at Ardmore, April 24, 1907.

C. M. Campbell,

Clerk, and *Ex officio* Recorder, District No. 21, Ind. Ter.

It appearing the within named minors are seized of lands herein in fee simple from their deceased mother, the father *nor* claiming any right or title thereto and that it is to the best interest of said minors that said lands be sold to provide for their education and support and to improve their separate estates, so as to make them productive and revenue producing, I respectfully

recommend to the Court that the petition be granted, and that said lands be appraised at the present reasonable market value, based on a fee simple title, and that said sale be made in all respects as by law provided, and that said guardian execute bond in double the amount that said lands shall sell for with and in more good and sufficient sureties to be approved by the Clerk of this Court.

Respectfully,

C. M. Campbell, Clerk.
By G. S. Gates, Dep.

5-2-07.

EXHIBIT D.

In the United States Court in the Indian Territory, Southern District, at Ardmore.

In the Matter of the Petition of William M. Patterson, as the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, for an order for the sale of lands inherited by said minors from their deceased mother Emma Patterson.

ORDER OF COURT GRANTING THE PETITION FOR SALE OF INHERITED INDIAN LANDS.

This cause coming on to be heard in open court on this the 2nd day of May, 1907, on the petition filed herein by William M. Patterson as the legal guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson and Joseph Allen Patterson and Ruby Elnora Patterson, minors, asking for an order of Court for the sale of the hereinafter mentioned lands and premises which are alleged to have been inherited by said minors from their deceased mother, Emma Patterson, and it appearing to the Court that the said William M. Patterson is the legal guardian of said minors; that

they are the owners of the lands hereinafter mentioned and set forth, having inherited the same from their mother, Emma Patterson, deceased; that the said Emma Patterson and the said minors are citizens of the Choctaw Nation by blood, not full blood but of mixed blood, and that the hereinafter mentioned lands and premises have heretofore been allotted to their said mother, Emma Patterson, as her allotment of same; that the said minors have no personal property, but only their allotments, and said lands so inherited, and that all of said lands, are wild and uncultivated and non-revenue producing; that said children should be educated and their maintenance provided for and their lands made revenue producing; that their said father, William M. Patterson, is practically insolvent and unable to properly provide out of his own funds for their education and maintenance, or to improve their lands so as to make the same revenue producing; that it would be for the best interest of said minors that the said lands be sold and the funds derived therefrom be applied to their education, maintenance, improvement of their other lands, and for investment in a way to produce an income and revenue; that all of said matters have heretofore been passed upon by the Clerk of this Court under directions of the Court, and that said Clerk has reported in writing that said lands should be sold and that the order prayed for should be granted;

And the Court being fully advised in the premises having reached the same conclusion;

It is therefore ordered and decreed by the Court that the said William M. Patterson, as the guardian of said minors aforesaid, shall sell and convey all of said minors' interest in and to the following described tracts and parcels of land located and situated in the Southern District of the Indian Territory, as follows, to wit:

The North half of the Northwest quarter of Sec-

tion 31, Township One South, Range One West; also the North half of the Northeast quarter of same section, township and range; also the Southeast quarter of the Northeast quarter of same section, township and range; also the Northeast quarter of the Southeast quarter of same section, township and range; also the East half of the southwest quarter of the Northeast quarter of same section, township and range; also the Northwest quarter of the Southwest quarter of the Northeast quarter of the same Section, township and range; also the West half of the Northwest quarter of the Southeast quarter of Section Eight, Township Two South, Range One West; also the South half of the Southeast quarter of the Southeast quarter of Section Seventeen, Township One South, Range One East; also the South half of the Southwest quarter of the Southeast quarter of same section, township and range; also the Northwest quarter of the Southwest quarter of the Southeast quarter of same section, township and range; also the Southeast quarter of the southeast quarter of the Southwest quarter of same section, township and range; also the Northwest quarter of the Northwest quarter of the Northeast quarter of Section Twenty, Township One South, Range One East; also the Southeast quarter of the Southeast quarter of Section Twelve, Township Two South, Range Two West; also the North half of the Northwest quarter of the Northeast quarter of same section, township and range; also the Southwest quarter of the Northwest quarter of the Northeast quarter of same section, township and range;

the same being the identical lands set forth in said petition.

That the sale of same shall be, in all things, conducted in accordance with law and the order of this

Court; that D. E. Booker, Guy T. Ledbetter and W. H. Wimberly, who are disinterested persons, are hereby appointed appraisers, and they shall take the oath prescribed by law, and conform in the appraisement, after viewing the said lands, as provided for by law; that the said William M. Patterson, as guardian, shall put up or cause to be put up notices of said sale at least twenty days before the date of sale thereof at ten of the most public places in the 21st recording district of the Southern District of the Indian Territory, particularly describing therein the lands to be sold, the time and place of sale and the terms thereof; that said sale shall be on a three months credit, and shall take place in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and said sale shall be at public outcry to the highest bidder, between the hours of ten o'clock forenoon and four o'clock afternoon, July 5th, 1907.

It is further ordered that the said guardian shall execute a good and sufficient bond with not less than two sureties, to be approved by the Clerk of this Court, in double the sum the land shall be appraised at, to conduct the sale with fidelity to the interest of his wards, and faithfully to account for the proceeds of the sale according to law and as the order of this Court may require.

"EXHIBIT E."

In the United States Court in the Indian Territory, Southern District, at Ardmore.

In the Matter of the Petition of William M. Patterson, as the guardian of the persons and estates of Dorcth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, minors.

REPORT OF SALE MADE BY GUARDIAN.

Comes now petitioner, William M. Patterson, as the legal guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, and reports to this Honorable Court that he, in obedience to the orders of this Court made and entered on the 2nd day of May, A. D. 1907, wherein and whereby petitioner was authorized, ordered and directed to sell at public outcry to the highest bidder on a credit of three months, on July 5th, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the Court House building in the City of Ardmore, Indian Territory, the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter; the north half of the northeast quarter; the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter; the east half of the southwest quarter of the northeast quarter; the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west;

Also the south half of the southeast quarter of the southeast quarter; the south half of the southwest quarter of the southeast quarter; the northwest quarter of the southwest quarter of the southeast quarter; and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west;

Also the northwest quarter of the northwest

quarter of the northeast quarter of section twenty, township one south, range one east;

Also the southeast quarter of the southeast quarter; the north half of the northwest quarter of the northeast quarter; and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west.

Your petitioner duly advertised and published the said sale by posting written notices thereof in ten of the most public places in the twenty-first Recording District, Southern District, Indian Territory, for more than twenty days continuously before the said date of sale, July 5, 1907, wherein a particular description of the lands and tenements to be sold was given; the time, place and terms of sale, in which said notices it was stated that the interest to be sold was the interests of the said children therein which was stated to be the fee simple title thereof, which was in no wise incumbered whatsoever. Prior to the said date of sale, to wit, on the 18th day of June, 1907, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly who had theretofore been appointed appraisers by this Court to appraise said lands and tenements, took the prescribed oath required in such cases, then viewed the said lands and premises, and thereafterwards appraised the same, and made and submitted a written report of their appraisement, which report is hereto attached and made a part hereof. They appraised the said lands and tenements to be two thousand one hundred dollars ($2,100.00), all of which was appraised as the interests of said minor wards mentioned hereinbefore.

On the day of sale prescribed by said order—that is, on the 5th day of July, 1907—your petitioner offered the interests of said minors in said land and tenements for sale at public outcry to the highest bidder on a credit of three months in front of the building in which the United States Court is held in the City of Ardmore,

Indian Territory, between the hours of ten o'clock forenoon and four o'clock afternoon. At said time, place and sale U. S. Joines bid for same the sum of $2,000.00, which said bid of said U. S. Joines for said amount, $2,000.00, being the highest and best bid was then and there accepted by petitioner.

The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises, that is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.

Your petitioner further states that he endeavored, in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible, and that he neither omitted, neglected or left undone anything he could do to further the interests of his said wards in said sale; that the lands having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.

Your petitioner further states that he has executed and delivered to the said U. S. Joines a deed conveying to him the interests of his said wards in said lands and tenements, a copy of which is hereto attached and made a part hereof; and he asks that said deed be approved and confirmed, so as to vest in said U. S. Joines all the right, title and interest of his said wards in said lands and tenements in accordance with the said sale aforesaid.

Petitioner further states that he was not the purchaser of said wards' interests in said lands and tenements, or of any part thereof, and that they were not

purchased for his use or benefit, and that he is not in any way whatever interested in the purchase thereof.

W. M. Patterson,

As the guardian of the persons and estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, minors.

Subscribed and sworn to before me this the 5th day of October, 1907.

S. H. Kyle,
Notary Public.

(Seal)

Filed at Ardmore, October 8, 1907. C. M. Campbell, Clerk and Officio Recorder, District No. 21, Ind. Ter.

"EXHIBIT F."

State of Oklahoma, County of Carter, ss. In County Court.

In the Matter of the Estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Minors.

Order Confirming Sale of Real Estate—Guardian.

Now on this 14th day of July, 1913, there coming on for hearing the return of sale made by William M. Patterson, as the guardian of the estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, appearing Thos. Norman, as attorney for said guardian, and no one appearing to object to the confirmation of the sale made by said guardian, nor any motion or objection thereto filed herein by any one, the order of

said sale having been made on 2nd day of May, 1907, by the United States Court in and for the Southern District of the Indian Territory, sitting at Ardmore therein, within the limits of what is now Carter County, Oklahoma, which said return was filed herein October 8th, 1907, and the Court having examined said return, and having heard and considered the evidence of witnesses offered in support of said return, it being the successor of the said United States Court in the Indian Territory sitting at Ardmore therein for the purposes hereof, and being fully advised in the premises, finds:

That in pursuance of said order of sale, said William M. Patterson as such guardian on the 5th day of July, 1907, sold the portion of real estate of said estate described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west.

Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also the northwest quarter of northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west,

at public sale to U. S. Joines upon the following terms, to wit:

For the sum of $2,000.00, payable as follows: Credit of three months, which has now been paid.

That said sale was made after due notice as prescribed by said order of sale; that said purchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten (10) per cent, exclusive of the expense of a new sale, cannot be obtained, and that the said William M. Patterson as such guardian in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided, and as by said order of sale required and directed.

It is therefore ordered, adjudged and decreed by the Court that the said sale be and the same is hereby confirmed and approved and declared valid, and the said William M. Patterson as such guardian is directed to execute to said purchaser proper and legal conveyance of said real estate.

W. F. Freeman,
County Judge.

(Seal)

Filed July 14, 1913.

(Upon the back of which appears the following filing endorsement, to wit:)

Filed in Open Court in the District Court of Murray County, Okla., Dec 13, 1920. Edna Swearing, Court Clerk.

STATEMENT

Of the filing of Agreed Statement of Facts and submission of cause to the Court for decision.

That thereafter, and on, to wit, the 26th day of May, 1921, the plaintiffs and defendant filed in open court an Agreed Statement of Facts in said cause, which said Agreed Statement of Facts is in words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson, and Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, plaintiffs, vs. U. S. Joines, defendant. No. 1842.

AGREED STATEMENT OF FACTS.

It is hereby agreed by and between the above named plaintiffs by their attorneys, Hayes & McIntosh, and the defendant, U. S. Joines, by his attorney, Wm. G. Davisson:

1. That the following described lands and premises were allotted to Emma Patterson, a Miss. Choc. of the one-fourth blood, to wit:

E½ of the NE¼ and the E½ of the W½ of NE¼ and NW¼ of SW¼ of NE¼ and W½ of NW¼ of NE¼ and N½ of NW¼ and NE¼ of SE¼ of section 31, township 1 south, range 1 west, and also W½ of NW ¼ of SE¼ of Sec. 8, township 2 south, range 1 west, containing 280 acres, more or less, according to the United States survey thereof, located and situated in Murray County, State of Oklahoma.

and

The W½ of the NE¼ of the NE¼ of section 27,

township 2 south, range 6 west, containing 20 acres, more or less, according to the United States survey thereof, located and situated in Stephens County, State of Oklahoma.

and

The $N\frac{1}{2}$ of the $NW\frac{1}{4}$ of the $NE\frac{1}{4}$, and the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ of $NE\frac{1}{4}$ and the $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of section 12, township 2 south, range 2 west of the Indian Base Meridian, located and situated in Carter County, State of Oklahoma, containing 70 acres, more or less, according to the United States survey thereof.

2. That the said Emma Patterson died intestate on or about the 14th day of May, 1906, in what was then the Central District of Indian Territory, and that at the time of her death she left surviving her her husband, W. M. Patterson, and her children, to wit: Doroth A. Patterson, female; Shelby A. Patterson, male; Howell M. Patterson, male; J. Allen Patterson, male, and Ruby E. Patterson, female, which said children were born to the said W. M. Patterson and Emma Patterson in lawful wedlock.

3. That the lands hereinabove described were filed on and allotted to the said Emma Patterson after her death by the said W. M. Patterson, her husband, as administrator of her estate.

4. That, W. M. Patterson, the husband of said Emma Patterson, was a white person and not on the tribal rolls and not a citizen, and that the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson were Miss. Cho. of the one eighth blood.

5. That the children of the said Emma Patterson,

plaintiffs herein, were born on the following dates, to wit:

Doroth A. McFarland, *nee* Patterson	9 March 25, 1894
Shelby A. Patterson	6 March 25, 1897
Howell M. Patterson	3 March 25, 1900
J. Allen Patterson	May 30, 1903
Ruby E. Patterson	Sept. 9, 1905

and on this the 20th day of December, 1920, are of the following ages, to wit:

Doroth A. McFarland, nee Patterson, 26 yrs., 8 months and 25 days.

Shelby A. Patterson, 23 years, 8 mths. and 25 days.
Howell M. Patterson, 20 yrs., 8 mths. and 25 days.
J. Allen Patterson, 17 yrs., 6 mths. and 20 days.
Ruby E. Patterson, 15 yrs., 3 mths. and 11 days.

6. That on the 24th day of April, 1907, W. M. Patterson, as the duly qualified and acting guardian of the persons and estates of the above named minors, filed in the United States Court for the Southern District of the Indian Territory at Ardmore his petition for the sale of the above described lands, a copy of which petition is hereto attached, made a part hereof and marked Exhibit "A"; that on the 2nd day of May, 1907, the United States Court sitting at Ardmore, Indian Territory, entered its order authorizing said guardian to sell said land, a copy of said order is hereto attached, made a part hereof, and marked Exhibit "B".

7. That on the 8th day of October, 1907, the said W. M. Patterson, as guardian of said minors, filed in the United States District Court at Ardmore, Oklahoma, his Report of Sale, a copy of which report of sale is hereto attached, made a part hereof and marked Exhibit "C".

8. That on the 14th day of July, 1913, the County

Court of Carter County, State of Oklahoma, entered its Order Confirming Sale of said real estate by said guardian, a copy of which Order of Confirmation is hereby attached, made a part hereof and marked Exhibit "D".

9. That on the 5th day of August, 1913, W. M. Patterson, as a guardian of said minors, executed a Guardian's deed to said lands to said defendant, a copy of which Guardian's deed is hereto attached, made a part hereof and marked Exhibit "E".

10. That W. M. Patterson above named was appointed guardian of the above named Doroth A. Patterson on December 7, 1904, at Durant, in the Central District of the Indian Territory; that the said W. M. Patterson was appointed guardian of Shelby A. Patterson and Howell M. Patterson above named on the 19th day of September, 1904, at Durant, in the Central District of the Indian Territory; that the said W. M. Patterson was appointed guardian of J. Allen Patterson and Ruby E. Patterson above named on the 22nd day of April, 1907, in the United States District Court of the Central District of Indian Territory, at Durant, Oklahoma; that the guardianship of the above named minors was never at any time pending in the Southern District of the Indian Territory or in Carter County, Oklahoma, except in the matter of the sale of said property as herein agreed and shown.

11. That on the 5th day of October, 1907, W. M. Patterson, as the guardian of said minors, executed a Guardian's Deed to the said defendant herein, copy of said deed is hereto attached, made a part hereof and marked Exhibit "F"; that the only order confirming the sale of said lands which was ever made is that shown as "Exhibat D" to this stipulation.

12. That the said U. S. Joines took possession of said lands and premises above described and has been in the peaceful possession of same from on or about the

5th day of October, 1907, until the present time, and is now in the possession of said lands.

13. That the said W. M. Patterson, husband of said Emma Patterson, and father of said above named children, has never at any time executed to U. S. Joines, or any other person, any deed whatsoever to his individual interest, if any, in and to said lands, and that no adult heirs joined in said sale.

14. That appraisers were appointed, appraisement was had, bonds were filed, notices were given and sale was held, reports were filed, deeds were executed and confirmation was had at the times, places and in the manner in the orders, reports, deeds and judgment, attached hereto as exhibits, ordered set forth and recited.

Respectfully submitted,

Hayes & McIntosh,
Attorneys for Plaintiffs.

Wm. G. Davisson,
Attorney for Defendant.

EXHIBIT "A."

In the United States Court in the Indian Territory, Southern District, Indian Territory, at Ardmore.

In the Matter of the Application of William M. Patterson, as Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, as Their Legal Guardian for an Order of Sale of the Lands Inherited by Them From Their Deceased Mother, Emma Patterson.

Petition and Complaint of Wm. M. Patterson, as Guardian of Indian Minors for the Sale of Inherited Lands, the Said Minors Being Indian Citizens.

Comes now your petitioner, Wm. M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as their natural and legal guardian, and respectfully states that they are minor children, aged, respectively, 13, 10, 7, 3 and 1 years; and that they reside and live in the Central District of the Indian Territory about seven miles northwest of the City of Durant, Indian Territory, and that the said William M. Patterson, their said father and legal guardian, resides at the same place and with them; and that the said William M. Patterson was duly and legally appointed and qualified in the United States Court in the Indian Territory, Central District aforesaid, at Durant, as their legal and lawful guardian, which appointment and qualification has been duly approved by the said court.

Petitioner states that said minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, by the said or any other marriage, and that they are the only heirs of the said Emma Patterson, whatsoever.

He states further that they are citizens of the Choctaw Nation by blood, being one-eighth Choctaw by blood and seven-eighths white, and that they have, except the two youngest ones, selected and taken in severalty their allotments of the Choctaws and Chickasaws; that their said mother, Emma Patterson, was at the time of and prior to her death, which occurred on the 14th day of May, 1906, a citizen by blood of said Choctaw Nation, and that she was at the time of her said death entitled to take and select an allotment as aforesaid, and that her husband, the said William M. Patterson, who on the ---

day of March, 1907, was duly appointed and qualified in said court at Durant, Indian Territory, as administrator of said estate of said Emma Patterson, selected and took in allotment and filed upon in her name, the following described lands located and situated in the Southern District of the Indian Territory, which are wild, rocky, unineclosed mountain lands, the same being situated within the jurisdiction of this honorable court, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of the southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of the same section, township and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also the southeast quarter of the southeast quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northeast quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range.

Petitioner further states that said minors are the sole and only heirs of their said mother, Emma Patterson, and that they have inherited the above described lands in fee simple from her; that they, and each of them is entitled to an allotment of the lands of said tribes of nations, and that the three oldest have already selected and filed upon the same, and that the two youngest intend to, and will in a short time, select and file upon lands for their allotments of same; that said minors have no property whatever except the aforesaid lands selected and filed as their allotments and such funds as may hereafter be distributed to them from the funds of said tribes or nations; that their father, William M. Patterson, is a citizen of the United States, and not a citizen of either of the Five Civilized Tribes, and that he is practically insolvent, not owning exceeding five hundred dollars worth of property, including household effects; that the three oldest children now need to be educated, but that their said father is unable to so educate them or give them any educational advantages whatever; that the lands selected and filed upon by the three oldest children aforesaid, and that intended to be filed upon by the two youngest, are wild lands and uncultivated, and that the same produce practically no revenue whatever out of which said children may be educated; that they have no funds, money or property with which to improve their said wild lands and reduce them to a state of cultivation, fence them, build houses thereon, and made them revenue producing; that it is for the interest and benefit of the said minors that the said inherited lands above described be sold under the orders of this court, and that the funds derived therefrom be used to educate the said minors, and to be invested in the improvements of their own individual allotments, and in such other way as appears proper and right, and to their best interests.

Wherefore, considering the above, petitioner prays for an order of this honorable court for the sale of said lands in compliance with the law, and for the investment

and use of the proceeds for the education of said minors and the improvement of their said lands, and for any and all other relief that they in equity and good conscience be entitled to.

Thos. Norman,

Attorney for Petitioner.

I, William M. Patterson, do solemnly swear that the facts and statements contained and set forth in the above petition are true.

W. M. Patterson.

Subscribed and sworn to before me this the ... day of ....., 1907.

Luther D. Davis,
(Seal) Notary Public.

It appearing that within named minors are seized of lands herein in fee simple from their deceased mother, the father not claiming any right or title thereto, and that it to the best interest of said minors that said lands be sold to provide for their education and support and to improve their separate estates, so as to make them productive and revenue producing, I respectfully recommend to the court that the petition be granted, and that said land be appraised at the present reasonable market value, based on a fee simple title, and that the said sale be made in all respects as by law provided, and that said guardian execute bond in double the amount that said lands shall sell for with and in more good and sufficient sureties to be approved by the clerk of this court.

Respectfully,

C. M. Campbell, Clerk.
By G. S. Gates, Deputy.

5/2/07.
Filed Apr. 24, 1907.

EXHIBIT "B."

In the United States Court in the Indian Territory, Southern District at Ardmore.

In the Matter of the Petition of William M. Patterson as the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson for an order for the sale of lands inherited by said minors from their deceased mother, Emma Patterson.

Order of Court Granting the Petition for Sale of Inherited Indian Lands.

This cause coming on to be heard in open court on this the 2nd day of May, 1907, on the petition filed herein by William M. Patterson as the legal guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors, asking for an order of court for the sale of the hereinafter mentioned lands and premises which are alleged to have been inherited by said minors from their deceased mother, Emma Patterson, and it appearing to the court that the said William M. Patterson is the legal guardian of said minors; that they are the owners of the lands hereinafter mentioned and set forth, having inherited the same from their mother, Emma Patterson, deceased; that the said Emma Patterson and the said minors are citizens of the Choctaw Nation by blood, not full blood, but of mixed blood, and that the hereinafter mentioned lands and premises have heretofore been allotted to their said mother, Emma Patterson, as her allotment of same; that the said minors have no personal property, but only their allotments are wild and uncultivated and non-revenue producing; that said children should be educated and their maintenance provided for and their lands made revenue producing; that their said father, William M. Patterson, is practically insolvent, and unable to properly provide out of his own funds for

their education and maintenance, or to improve their lands so as to make the same revenue producing; that it would be for the best interest of said minors that the said lands be sold and the funds derived therefrom be applied to their education, maintenance, improvements of their other lands, and for investment in a way to produce an income and revenue; that all of said matters have heretofore been passed upon by the clerk of this court under directions of the court, and that said clerk has reported in writing that said lands should be so sold, and that the order prayed for should be granted.

And the court, being fully advised in the premises, having reached the same conclusion:

It is therefore ordered and decreed by the court that the said William M. Patterson, as the guardian of said minors aforesaid, shall sell and convey all of said minors' interest in and to the following described tracts and parcels of land located and situated in the Southern District of the Indian Territory, as follows, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of the same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of same section, township

and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also southeast quarter of the southwest quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northeast quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range; the same being the identical lands set forth in said petition.

That the sale of same shall be, in all things, conducted in accordance with law and the order of this court; that D. E. Booker, Guy T. Ledbetter and W. H. Wimberly, who are disinterested persons, are hereby appointed appraisers, and they shall take the oath prescribed by law, and conform in the appraisement, after viewing the said lands, as provided for by law; that the said William M. Patterson, as guardian, shall put up, or cause to be put up, notices of said sale at least twenty days before the date of sale thereof at ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, particularly describing therein the lands to be sold, the time and place of sale and the terms thereof; that said sale shall be on a 3 months credit and shall take place in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and said sale shall be at public outcry to the highest bidder, between the hours of ten o'clock forenoon and four o'clock afternoon, July 5th, 1907.

It is further ordered that the said guardian shall

execute a good and sufficient bond with not less than two sureties, to be approved by the clerk of this court, in double the *sum* the lands shall be appraised at to conduct the sale with fidelity to the interest of his wards, and faithfully to account for the proceeds of the sale according to law, and as the order of this court may require.

EXHIBIT "C."

In the United States Court in the Indian Territory, Southern District at Ardmore.

In the Matter of the Petition of William M. Patterson as the guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors.

REPORT OF SALE MADE BY GUARDIAN.

Comes now petitioner, William M. Patterson, as the legal guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and reports to this Honorable Court that he, in obedience to the orders of this court made and entered on the 2nd day of May, A. D. 1907, wherein and whereby petitioner was authorized, ordered and directed to sell at public outcry to the highest bidder on a credit of three months, on July 5th, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the court building in the City of Ardmore, Indian Territory, the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest

quarter of the northeast quarter; the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west. Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter and the southeast quarter of the Southeast quarter of the southwest quarter of section seventeen, township one south, range one east. Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west. Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east. Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west.

Your petitioner duly advertised and published the said sale by posting written notices thereof in ten of the most public places in the Twenty-first Recording District, Southern District; Indian Territory, for more than twenty days continuously before the said date of sale, July 5, 1907, wherein a particular description of the lands and tenements to be sold was given, the time, place and terms of sale, in which said notices it was stated that the interest to be sold was the interests of the said children therein, which was stated to be the fee simple title thereof, which was in no wise incumbered whatsoever prior to the said date of sale, to wit: On the 18th day of June, 1907; D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore been appointed appraisers by this court to appraise said lands and tenements, took the prescribed oath required in such cases, then viewed the said lands and premises, and

thereafterwards appraised the same and made and submitted a written report of their appraisement, which report is hereto attached and made a part hereof. They appraised the said lands and tenements to be two thousand one hundred dollars ($2,100.00), all of which was appraised as the interests of said minor wards mentioned hereinbefore. On the day of sale prescribed by said order; that is, on the fifth day of July, 1907, your petitioner offered the interests of said minors in said lands and tenements for sale at public outcry to the highest bidder on a credit of three months in front of the building in which the United States Court is held in the City of Ardmore, Indian Territory, between the hours of ten o'clock forenoon and four o'clock afternoon. At said time, place and sale, U. S. Joines bid for same the sum of $2,000.00, which said bid of said U. S. Joines for said amount, $2,000.00, being the highest and best bid, was then and there accepted by petitioner.

The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises; that is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.

Your petitioner further states that he endeavored, in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible; and that he neither omitted, neglected or left undone anything he could do to further the interests of his said wards in said sale; that the lands, having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.

Your petitioner further states that he executed and delivered to the said U. S. Joines a deed conveying to him the interests of his said wards in said lands and tenements, a copy of which is hereto attached and made a part hereof, and he asks that said deed be approved

and confirmed, so as to vest in said U. S. Joines all the right, title and interests of his said wards in said lands and tenements in accordance with the said sale aforesaid.

Petitioner further states that he was not the purchaser of said wards' interests in said lands and tenements, or of any part thereof, and that they were not purchased for his use or benefit, and that he is not in any way whatever interested in the purchase hereof.

W. M. Patterson,
As the Guardian of the Persons and Estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Minors.

Subscribed and sworn to before me this the 5th day of October, 1907.

(Seal) S. H. Kyle, Notary Public.

Filed Oct. 8, 1907.

C. M. Campbell, Clerk.

EXHIBIT "D."

State of Oklahoma, Carter County, ss. In County Court.

In the Matter of the Estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Minors.

Order Confirming Sale of Real Estate—Guardian.

Now, on this 14th day of July, 1913, there coming on for hearing the return of sale made by William M. Patterson as the guardian of the estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Thos. Norman, as attorney for said guardian, and no

one appearing to object to the confirmation of the sale made by said guardian, nor any motion or objection thereto filed herein by any one, the order of said sale having been made on 2nd day of May, 1907, by the United States Court in and of the Southern District of the Indian Territory sitting at Ardmore therein, within the limits of which is now Carter County, Oklahoma, which said return was filed herein October 8, 1907, and the court having examined said return, and having heard and considered the evidence of witnesses offered in support of said return, it being the successor of the said United States Court in the Indian Territory sitting at Ardmore therein for the purposes hereof and being fully advised in the premises finds:

That in pursuance of said order of sale, said William M. Patterson, as such guardian on the 5th day of July, 1907, sold the portion of real estate of said estate described as follows, to wit:

> The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west. Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east. Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west. Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one

east. Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve (12), township two south, range two west,

at private sale to U. S. Joines upon the following terms, to wit:

For the sum of $2,000.00, payable as follows, credit of three months which has not been paid.

That said sale was made after due notice as prescribed by said order of sale; that said purchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that sum exceeding such bid at least ten (10) per cent, exclusive of the expense of a new sale cannot be obtained, and that the said William M. Patterson, as such guardian, in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided and as by said order of sale required and directed.

It is therefore ordered, adjudged and decreed by the court that the said sale be, and the same is hereby, confirmed and approved and declared valid, and the said William M. Patterson, as such guardian, is directed to execute to said purchaser proper and legal conveyance of said real estate.

W. F. Freeman,
County Judge.

(Seal)

Filed July 14, 1913.

EXHIBIT "F."

United States of America, Southern District, Indian Territory, ss:

GUARDIAN'S DEED.

Now, whereas, William M. Patterson was on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District, at Durant, and has duly qualified as such guardian of said minors and is now and has been at all times subsequent to said date aforesaid the guardian of the persons and estate of said children;

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof;

And, whereas, the said William M. Patterson as the guardian aforesaid of the said minor children, did, on the 24th day of April, 1907, filed a written petition in the United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of Court authorizing and directing a sale of said minor's interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvements of their estates and for investment purposes, said land and tenements being situated within said Court's jurisdiction;

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition did, on the 2nd day of May, A. D.,

1907, authorize, order and direct the said William M. Patterson as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements at public outcry, on a credit of 3 months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held;

And, whereas, the said William M. Patterson, as guardian aforesaid, did, in compliance with and in obedience to said order of Court, more than twenty days before the fifth day of July, 1907, post written notices of sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, the time, place and terms of sale as stated in the said order;

And, whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid, been appointed by said Court to appraise said children's interests in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises, and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00);

And, whereas, the said William M. Patterson, as guardian of the aforesaid children did, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months;

And, whereas, at said time, place and sale, U. S. Joines, of Ardmore, Indian Territory, bid Two Thousand ($2,000.00) Dollars therefor, which was the highest and best bid then and there offered and made; and the same being more than three fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson, as such guardian aforesaid, and the same now having been paid;

Therefore, be it known to all men by these presents, that I, William M. Patterson, as the guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, and each of them, minors, in consideration of the premises aforesaid, and by virtue of my power and authority as guardian of said minors and their estate as aforesaid, and for and in consideration of the said sum of Two Thousand ($2,000.00) Dollars cash in hand, paid by the said U. S. Joines, the receipt of which is hereby acknowledged, have granted, bargained, sold, and conveyed, and do by these presents here grant, bargain sell and convey unto the said U. S. Joines, his heirs and assigns, all the right, title and interest of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, and of each of them, in and to the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

> The North half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west.
>
> Also, the south half of the southeast quarter of the

southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also, the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also, the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also, the southeast quarter of the southeast quarter; the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two east, the same being the identical lands petitioned to be sold, ordered to be sold, appraised, and notices of sale posted and sold, as aforesaid.

Together with and including all the rights, privileges with, or in anywise appertaining thereunto.

To have and to hold, the same unto the said U. S. Jones, his heirs and assigns, in quiet and peaceable possession and in fee simple forever.

Witness my hand and signature as such guardian of said minor children this the 5th day of October, 1907.

W. M. Patterson.

As the guardian of Doroth A. Patterson, Shelby A. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, as aforesaid.

United States of America, Central District, ss.

ACKNOWLEDGMENT.

On this, the 5th day of October, A. D. 1907, came and appeared in person before me, the undersigned, Notary Public within and for the Central District of the Indian Territory, William M. Patterson, personally well known to me to be the person whose name appears upon and to the foregoing instrument as the party grantor, and stated to me that he had executed the same for the uses, purposes and consideration therein mentioned and set forth, and in the capacity of guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson as therein mentioned and set forth, and I hereby do so certify.

Witness my hand and signature as such Notary Public, this the 5th day of October, A. D., 1907.

(Seal) S. H. Kile,
Notary Public as aforesaid.

United States of America, State of Oklahoma, County of Bryan, ss

EXHIBIT "E"

Now, whereas, William Patterson, was, on the 7th day of March A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District at Durant and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid the guardian of the persons and estates of said children:

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Pat-

terson, and Ruby Elnora Patterson, have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, and said children being the sole and exclusive heirs thereof;

And, whereas, the said William M. Patterson, as the guardian aforesaid, of the said minor children did, on the 24th day of April 1907, after having previously given due, legal and timely notice of his intention to make application therefor, file a written petition in the United States Court in the Indian Territory, Southern District, at Ardmore, duly verified, praying for an order of Court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described for the education, maintenance and support of said minors, the improvement of their estates and for investment purposes, said lands and tenements being situated within said Court's jurisdiction;

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition, did, on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson as guardian aforesaid of the said children to sell and convey said children's right title and interest in and to the said lands and tenements at public outcry on a credit of three months on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon in front of the building in the City of Ardmore, Indian Territory, in which the United States Court is held.

And, whereas, the said William M. Patterson as guardian aforesaid did, in compliance with and in obedience to said order of Court more that twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of Indian Territory giving therein a particular description of said

lands and tenements, the time, place, and terms of sale as stated in the said order;

And, whereas, D. E. Booker, Guy T. Ledbetter, and Will H. Wimberly, who had theretofore in said order aforesaid been appointed by said Court to appraise said children's interest in said lands and tenements, did, on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be Two Thousand One Hundred Dollars ($2,100.00).

And, whereas, the said William M. Patterson as guardian of the aforesaid children did, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months;

And, whereas, at said time, place and sale U. S. Joines, of Ardmore, Indian Territory, bid Two Thousand ($2,000.00) Dollars therefor which was the highest and best bid then and there offered and made, and the same being more that three fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson as such Guardian aforesaid, and the same having now been paid;

And, Whereas, the said William M. Patterson, guardian as aforesaid, did, on the 8th day of October, 1907, duly file his return herein showing that he had sold the said lands to the said U. S. Joines as aforesaid for the sum of Two Thousand Dollars ($2,000.00) and showing all of his acts done under said order of sale, and asking that said sale be confirmed.

And, whereas, the County Court of Carter County, State of Oklahoma, being the successors of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern District of the Indian Territory sitting at Ardmore could have done, did on the 14th day of July, 1913, make an order confirming said sale and directing a conveyance to be executed by the said William M. Patterson as guardian aforesaid to the said U. S. Joines, a certified copy of which order of confirmation was recorded in the office of the Register of Deeds of Carter County on the 19th day of July, 1913, in book Misc. Records 15, at page 27, thereof and also in the office of the Register of Deeds of Murray County, on the 16th day of July, 1913, in Book Misc. Records 6, at page 1, within which said two counties the said lands are situated and which said order of confirmation now on file and of record in said two counties and which said records thereof in said two register of deeds offices are hereby referred to and made a part of this indenture.

Now, therefore, the said William M. Patterson, as guardian of said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, pursuant to the order last aforesaid of said County Court of Carter County, Oklahoma, and for and in consideration of the sum of Two Thousand Dollars ($2,000.00) cash in hand paid by the said U. S. Joines to the said William M. Patterson, guardian as aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns forever, all the right, title and interest and estate of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Pat-

terson, and Ruby Elnora Patterson, minors, as aforesaid, in and to all the certain lots, pieces or parcels of land situated and lying and being in the said Counties of Carter and Murray, in the State of Oklahoma, and bounded and particularly described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of section thirty one, township one south, range one west.

Also, the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also, the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also, the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also, the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two (2) west.

together with the tenements, hereditaments and appurtenances whatsoever to the same belonging or in any way appertaining.

To have and to hold all and singular the above mentioned and described premises unto the said U. S. Joines, his heirs and assigns forever.

In witness whereof the said William M. Patterson, as guardian aforesaid, has hereunto set his hand this the 5th day of Aug., 1913.

Wm.
W. M. Patterson,

As Guardian Aforesaid of Said Minors.

Signed and delivered in the presence of E. P. Williams.

State of Oklahoma, Bryan County, ss:

Before me, the undersigned, a notary public within and for said county state, on this 5th day of Aug., 1913, personally appeared William M. Patterson, as the guardian of Doroth A. Patterson, Joseph Allen Patterson, Shelby A. Patterson, Howell A. Patterson and Ruby Elnora Patterson, minors, to me known to the identical persons who executed the within and foregoing instrument and acknowledged to me that he executed the same in the capacity therein stated as his free and voluntary act and deed for the uses and purposes therein set forth.

E. P. Williams,
Notary Public.

(Seal)

My commission expires Aug. 23, 1916.

Filed for record August 6th, 1913, at 3:30 p. m. in Deed 14, page 148.

(Upon the back of which appears the following filing endorsement, to wit):

Filed in Murray County, Okla., May 26, 1921. *Edna Swearengen*, Court Clerk.

STATEMENT

Of filing of Conclusions of Law based on Agreed Statement of Facts by the Court.

Be it Remembered: That thereafter and to wit: On the 26th day of May, 1921, the Court filed his Conclusions of Law, which Conclusions of Law are in words and figures as follows, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson, and Howell M. Patterson, a minor, J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

In this case the Agreed Statement of Facts contained in three pages with Exhibits is adopted as Conclusions of Facts.

CONCLUSIONS OF LAW.

I find that W. M. Patterson upon the death of his wife, Emma Patterson, acquired a life estate or estate by courtesy in the lands in controversy. I find further that the interest acquired by him is barred by the seven years Statute of Limitations of the Arkansas law then in force in the Indian Territory, the lands having been sold and report thereof having been made in 1907, prior to the time said Territory became a part of the State of Oklahoma.

Second: I further find that by the acts and conduct of said W. M. Patterson that he was estopped to bring this action by reason of his conduct, in putting defendant in possession at the time of sale of his wards' interest and allowing him to remain in possession for fourteen years without complaint.

Third: I find that the Southern District of the Indian Territory had jurisdiction to authorize the Guardian's sale and the confirmation thereof by the County Court of Carter County was not void, and that plaintiffs are not in position to attack the same collaterally.

Fourth: I find that the minor heirs were authorized to sell through their guardian without joining any adult heirs, there being no adult heirs at that time.

Fifth: I find that all adult heirs, to wit: Doroth A. McFarland and Shelby Patterson, are barred by the Statute of Limitations, and resolve all issues in favor of the defendant.

T. P. Clay,
District Judge Assigned.

(Upon the back of which appears the following filing endorsement, to wit:)

Filed in Murray County, Okla., May 26, 1921. *Edna Swearing*, Court Clerk.

STATEMENT

Of the rendition of judgment and order overruling motion for new trial.

That thereupon the Court proceeded to and did make and enter judgment herein in favor of the defendant and against the plaintiffs, to which action of the Court in rendering said judgment, and which judgment, the plaintiffs then and there excepted and their exceptions were by the Court allowed, the said judgment and decree by the Court so rendered herein being in words and figures as follows, to wit:

JUDGMENT AND NOTICE OF APPEAL.

And now judgment is rendered for the defendant and against the plaintiff, that plaintiff take nothing by

reason of this action and that defendant recover his costs. To which action of the Court the plaintiff excepts and his exceptions are allowed; and now on this the 26 day of May, 1921, came on to be heard the Motion of plaintiff for a new trial, and after hearing said motion the same is in all things overruled; to which action of the Court the plaintiff excepts and now in open court gives notice of appeal to the Supreme Court of the State of Oklahoma, and the same is directed to be entered upon the trial docket of this Court, and for good cause shown the plaintiff is granted 90 days in which to make and serve a case made, 10 days for the opposite party to suggest amendments; same to be settled on five days notice.

T. P. Clay,

District Judge Assigned.

(Upon the back of which appears the following filing endorsement, to wit:)

"Filed in Murray County, Okla., May 27, 1921. *Edna Sweezea*, Court Clerk."

STATEMENT

Of the filing of a Motion for New Trial.

That thereafter and on to wit: the 26th day of May, 1921, said plaintiffs filed a Motion for New Trial, praying that the Court set aside and hold for naught the judgment heretofore rendered herein and to grant him a new trial herein, said Motion for a New Trial so filed herein by the plaintiffs being in words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Motion for New Trial.

Comes now the plaintiffs and move the Court to vacate and set aside the judgment rendered herein on the 26th day of May, 1921, and to grant a new trial for the following causes, which affect materially the substantial rights of said plaintiffs:

1. That the judgment and decisions of the Court rendered herein is not sustained by sufficient evidence and is contrary to law.

2. That the Court erred in his conclusions of fact, because they are not sustained by the evidence.

3. That the Court erred in his conclusions of law.

4. That the judgment of the Court is contrary to both the evidence and the law.

Wherefore, plaintiffs ask that the judgment *h*eretofore rendered be set aside and held for naught, and that a new trial be granted.

Hayes & McIntosh,

Attorneys for Plaintiffs.

(Upon the back of which appears the following filing endorsement, to wit:)

Filed in open court in the District Court of Murray County, Okla. May 26, 1921. Edna *Sweatena*, Court Clerk.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Statement of What Case-Made Contains.

The above and foregoing Case-Made sets out fully, completely and correctly all pleadings filed; all motions

and demurrers made or filed, and the orders and filings thereon; all evidence offered, introduced and received; objections; exceptions; admissions and agreements; all instructions given to the jury; the findings; judgments; records, and proceedings upon which the judgment rendered herein is based, and that the same is a full, true, complete and correct statement, copy and transcript of all the pleadings, motions, demurrers, orders, rulings, evidence, objections, exceptions, admissions, agreements, findings, judgments, records and proceedings in the above entitled and numbered cause upon which the judgment therein is based.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

SERVICE OF CASE-MADE.

To the Above Named U. S. Joines, and His Attorney of Record, Wm. G. Davisson:

The above and foregoing case-made is hereby tendered to and served upon you and each of you as a full, true and complete case-made in the above entitled and numbered cause, and as being a full, true, complete and correct statement, copy of transcript of all pleadings filed, motion and demurrers made or filed, orders, rulings, evidence, objections, exceptions, admissions, agreements, findings, conclusions, judgments, records and proceedings in the above entitled and numbered cause upon which the judgment rendered herein is based.

Hayes & McIntosh and
Hatchett & Semple,
Attys. for Plaintiffs.

I, the undersigned, Attorney of Record for the De-

fendant, for and on his behalf hereby accept service of the above and foregoing case made on me this the 10th day of Aug., 1921.

Wm. G. Davisson,
Atty. for Defendant.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Agreement That Case Made is Complete.

It is hereby agreed and stipulated by and between the plaintiff and defendant in the above entitled and numbered cause, by and through their respective attorneys of record, the undersigned, that the within and foregoing case made contains a full, true, complete and correct copy and transcript of all of the pleadings, motions, demurrers, orders, rulings, statement of fact, evidence, objections, exceptions, admissions, agreements, judgment, records and proceedings in the above entitled and numbered cause, upon which the judgment therein is based, and that the same is a full, true and complete case made in the above entitled and numbered cause.

Attys. for Plaintiffs.

Wm. G. Davisson,
Atty. for Defendant.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

WAIVER OF AMENDMENTS AND NOTICE OF SETTLEMENT OF CASE MADE.

I, the undersigned, attorney of record for the defendant in the above entitled and numbered cause, for and on his behalf, hereby waive the right to suggest amendments to the above and foregoing case-made and waive the service upon the defendant of notice of the presentation of said case-made to the trial judge of said Court for settling, signing and certifying, and hereby consent that said case-made may be presented to said judge and by him settled, signed and certified at any time.

Wm. G. Davisson,
Atty. for Defendant.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Jones, Defendant. No. 1842.

JUDGE'S CERTIFICATE.

I, the undersigned, Judge of the District Court within and for Murray County, Oklahoma, by assignment, hereby certify that the above and foregoing case-made was this day presented to me at Cheyenne, Roger Mills Co., Oklahoma, by the plaintiffs therein to be settled, signed and certified as the original case-made therein and it appearing to me that the said case-made has been duly made and served upon the defendant within the time fixed by the order of the Court, and that the right to suggest amendments and the service of notice of settlement of case-made have been waived in writing, in the case made, by the defendant therein, and that no amendments have been made or suggested, said case-made is examined by me and is found to be a true, full and correct case-made and to contain a full, true, complete and correct copy and transcript of all the evi-

dence, agreements, records and proceedings in said cause upon which the judgment therein is based; and,

I, therefore, hereby allow, settle, sign and certify the same as being a full, true, complete and correct case-made in the above entitled and numbered cause and hereby order that the same be filed by the Clerk of the aforesaid Court, and my signature hereto attached by him, and that he affix the seal of said Court thereto, and that he, thereupon, deliver the same to the plaintiffs therein for filing in the Supreme Court of the State of Oklahoma.

Witness my hand in Chambers in the City of Cheyenne, Roger Mills Co., State of Oklahoma, this 10th day of Sept., 1921.

T. P. Clay,

Judge of the — Judicial District of Oklahoma, assigned to Murray Co.

(Seal)

Attest: Edna Swearengin, Court Clerk, Murray Co., Okla

I, the undersigned, hereby certify that the above and foregoing case-made, after the same had been duly signed by the District Judge of Murray County, Oklahoma, and attested by me, was filed in the office of the Court Clerk of Murray County, Oklahoma, this 1st day of October, 1921 and thereafter withdrawn from the files by the said plaintiffs herein.

(Seal) Edna Swearengin,

Court Clerk, Murray County, Oklahoma.

Filed Oct. 1, 1921. Edna Swearengin, Court Clerk, Murray County, Okla. By ..... Deputy.

And thereafter on the 5th day of June, 1923, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry Permitting Plaintiff in Error to File Typewritten Brief, which said Journal Entry is recorded in Journal No. 12, at page 68, and is in words and figures as follows, to wit:

Supreme Court, April Term, 1923, June 5th, 1923, Fifteenth Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this June 5th, 1923, Supreme Court convened pursuant to adjournment of May 29, 1923.

Present: N. E. McNeill, Acting Chief Justice; M. J. Kane, J. B. Harrison, F. E. Kennamer, and C. B. Cochran, Associate Justices; W. M. Franklin, Clerk, and F. S. Hillman, Marshal.

Public proclamation of the opening of the Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. Wm Patterson, et al. vs. U. S. Joines.

And now on this day it is order by the court that plaintiff in error be permitted to file typewritten brief in the above cause.

* * * * * * * * * * *

Journal 12 Page 68.

And thereafter on the 9th day of October, 1923, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry Overruling Motion to Advance, which said Journal Entry is recorded in Journal 12 at page 184 and is in words and figures as follows, to wit:

Supreme Court, October Term, 1923, October 9th, 1923, First Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Oct. 9, 1923, Supreme Court convened pursuant to the regular October 1923 term of Court.

Present: J. T. Johnson, Chief Justice; M. J. Kane, N. E. McNeill, G. M. Nicholson, F. E. Kennamer, C. B. Cochran, F. P. Branson and C. W. Mason, Associate Justices; W. M. Franklin Clerk, and P. S. Hillman, Marshal.

Public proclamation of the opening of Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. W. M. Patterson, et al. vs. U. S. Joines.

And now on this day it is ordered by the Court that the motion to advance filed in the above cause be and the same is hereby overruled.

* * * * * * * * * * *

Journal 12 Page 184.

And thereafter on the 11th day of December, 1923, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry of Submission, which said Journal Entry is recorded in Journal No. 12, at page 256, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1923. December 11th, 1923. First Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered that on this Dec. 11, 1923, Supreme Court convened for the regular December 1923 term of Court.

Present: J. T. Johnson, Chief Justice; M. J. Kane, J. B. Harrison, F. E. Kennamer, and C. B. Cochran, Associate Justices; W. M. Franklin, Clerk, and P. S. Hillman, Marshal.

Public proclamation of the opening of Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. W. M. Patterson, et al., vs. U. S. Jones.

* * * * * * * * * * *

And now on this day the above cause is submitted on the record and briefs filed therein.

* * * * * * * * * * *

Journal 12, Page 256.

And thereafter on the 16th day of December, 1924, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry of Opinion, which said Journal Entry is recorded in Journal 12, at p. 448, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1924. December 16th, 1924. Second Judicial Day.
United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Dec. 16, 1924, Supreme Court convened pursuant to adjournment of Dec. 9th 1924.

Present: N. E. McNeill, Chief Justice; J. T. Johnson, G. M. Nicholson, F. P. Branson, C. W. Mason, F. L. Warren and J. H. Gordon, Associate Justices; W. M. Franklin, Clerk, and P. S. Hillman, Marshal.

Public proclamation of the opening of Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. W. M. Patterson et al. vs. U. S. Joines. Opinion by Stephenson, C.

* * * * * * * * * * *

And now this cause comes on for final decision and determination by the Court upon the record and briefs filed therein.

And the Court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the Court that the judgment of the trial court in the above cause be and the same is hereby affirmed.

* * * * * * * * * * *

Journal 12, page 448.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

SYLLABUS.

1. The probate code as contained in Mansfield's Digest, as construed by the Supreme Court of Arkansas, fixed venue to order of the sale of real estate owned by a minor in the probate court of the county in which the minor's land is situated, although the guardianship cause was pending in another probate court.

2. Whether the probate court in which the guardianship cause was pending, in the county of the residence of the minor, could order the sale of the minor's land situated in another county was not decided by the Supreme Court of Arkansas prior to the date of the extension of the probate code of Arkansas over the Indian Territory.

3. An act of the legislature in adopting a statute of another state includes the decisions of supreme court of the originating state, construing the statutes, prior to adoption, and such decisions are binding on all courts of the adopting state until modified or overruled by the supreme court of the latter state.

4. This court in the consideration of an appeal before it will not modify or overrule a decision of the supreme court of the originating state, construing the adopted statute, when to do so would have the effect of destroying a title resting on a judicial proceeding had in accordance with the adopted statute, as construed by the supreme court of the originating state, unless the decision thereon by the court of the latter state is manifestly against the expressed legislative intention, or clearly against public policy of the adopting state.

5. By the act of Congress of May 2nd, 1890, and supplementary acts extending the probate code of Arkansas, as contained in Mansfield's Digest, over the Indian Territory, the acts provide that where the word 'county' appears in any of the Arkansas acts it should be read as 'district' in the application of the the laws of the Indian Territory.

6. In the admission of the State of Oklahoma into the Union, by virtue of Section 19 of the Enabling Act (34 Stat. at L. 227) and Section 23 of the schedule of the Constitution, the state court having jurisdiction situated in the county of the location of the Federal court, succeeded the latter court in jurisdiction of all such cases pending in the Federal court, and was authorized to continue to exercise all such jurisdiction until the cause was properly transferred to some other court.

7. In the trial of a cause upon an agreed statement of facts, on appeal this court is bound by the propositions of law as made by the agreed statement of facts between the parties.

8. Record examined; *Held*, that the judgment in favor of the defendant as based upon the agreed statement of facts submitted by the parties for the trial of the cause is supported by law and is without error.

Syllabus by Stephenson, C:

Error from the District Court of Murray County. T. P. Clay, Judge.

Action by W. M. Patterson et al. against U. S. Joines to quiet title in plaintiffs' real estate as described in petition of plaintiffs. Judgment for defendant. Plaintiffs bring error.

Affirmed.

Hatchett and Semple, for Plaintiffs in Error.

Wm. G. Davisson, for Defendant in Error.

OPINION BY STEPHENSON, C.: Emma Patterson was duly enrolled on the approved Mississippi Choctaw rolls as of one-eighth Indian blood, and died intestate on or about the 14th day of May, 1906, in the central district of the Indian Territory. She left surviving her as her next of kin W. M. Patterson, her husband, a white person and non-citizen, and the following children, as of the ages shown on May 14th, 1906: Dorroth A. McFarland, *nee* Patterson, age 12 years; Shelby A. Patterson, age 9 years; Howell M. Patterson, age 6 years; J. Allen Patterson, age 3 years; and Ruby E. Patterson, age 1 year. The children were duly enrolled on the approved Mississippi Choctaw Indian Rolls as of ⅛ Indian blood. The deceased did not receive her distributive share of the allotable lands during her lifetime, and W. M. Patterson as administrator of her estate made the selection of her allotment of lands, which are involved in this action. The greater portion of the land was located in the Southern district. W. M. Patterson was appointed guardian of the minor children

by the U. S. District Court of the Central district, holding its terms at Durant. On the 24th day of April, 1907, W. M. Patterson as the guardian of the minor children filed his petition in the U. S. Court for the Southern district, holding its terms at Ardmore, praying an order for the sale of the minors' interest in the allotment made for their mother by the administrator. On the 2nd day of May, 1907, the U. S. Court entered its order directing the guardian to sell the minors' interest in the land. The guardian filed his report of the sale of the minors' interest. On the 5th day of Oct., 1907, W. M. Patterson as the guardian of the minors executed a guardian's deed pursuant to the sale, conveying the allotment of the decedent to U. S. Joines. W. M. Patterson has not at any time attempted to make a conveyance of any interest in the land, in his own right, to the defendant or to any other person. On the 14th day of July, 1913, the county court of Carter County entered its order confirming the sale of the lands in question to U. S. Joines. On Aug. 5th, 1913, W. M. Patterson as guardian for the persons named as minors, executed and delivered his guardian's deed to the defendant, which purported to convey the interest of all the children named as minors in and to the lands in question. By the advent of Statehood, the county court of Bryan county succeeded the U. S. District court of the Central district in the jurisdiction of the guardianship case, and the case has been pending in the county court of Bryan county at all times. On Feb. 21, 1920, W. M. Patterson and the children of the decedent, who were the issues of the marriage of W. M. Patterson and the decedent, commenced their action against U. S. Joines as the purchaser of the allotment of the decedent, through the proceedings recited herein to quiet title to the allotment in the plaintiffs. In the trial of the cause, judgment went for the defendant and against the plaintiffs. The plaintiffs have appealed the cause to this court for review on account of certain proceedings

had in the trial court, and for reversal submit the following propositions of law:

(a) That the U. S. District Court of the Southern District at Ardmore did not have jurisdiction to order the sale of land inherited by the minors;

(b) That the order of confirmation entered by the County Court of Carter County was void for the lack of jurisdiction;

(c) That the plaintiff W. M. Patterson acquired a courtesy interest in the land.

The trial of this cause was submitted to the court upon an agreed statement of facts. There is no question of fraud involved in the case. The agreed statement of facts presents but two questions of law, (a) jurisdiction of the U. S. District Court at Ardmore to take jurisdiction of the cause; and (b) the interest, if any, of W. M. Patterson as the surviving husband of the decedent in the property. As no equitable questions are involved in this case, as made by the agreed statement of facts, the rights among the parties are determined by the statutes and judicial construction placed thereon by the supreme courts of the originating and adopting states.

The following portion of plaintiff in error's brief states the questions of law as made by the appellants:

> "We are aware that Section 3509 of Mansfield's Digest of the Statutes of Arkansas provides 'that the lands of minors may be sold upon obtaining an order for such sale from the court of probate of the county in which such real estate, or the greater part thereof, shall be situated.' But this statutes contemplates that the order of sale shall be obtained in a regular probate proceeding, in the court where the order is made, and does not authorize a guardian appointed in some other county to institute a

proceeding in a court not having jurisdiction of the guardianship case."

The main contention made by the plaintiffs in error, is that the probate court in which the guardianship cause is pending must issue the order of sale. The defendant in error contends that the probate court of the county in which the land or a greater portion thereof is situated, may entertain a petition for the sale of the land, although the guardianship cause may be pending in a probate court in some other county. So, the question involved between the parties, was the jurisdiction of the U. S. Court sitting at Ardmore to order the sale, while the guardianship cause was pending in the U. S. District Court sitting at Durant. By an act of Congress, the probate code as contained in Mansfield's Digest was extended over the Indian Territory and was the law applicable to the sale of the estates of minors at the time the petition was filed for the sale of the land involved in this action. The law is well settled that the presumption is, that the act of the adopting state is intended to include the judicial construction placed upon the statutes by the highest court of the originating state prior to adoption. *Brown* v. *Walker*, 161 U. S. 591, 40 L. ed. 819; *Willis* v. *Eastern Trust and Banking Co.*, 169 U. S. 295, 42 L. ed. 752; *Harrill* v. *Davis*, 168 Fed. 187, 94 C. C. A. 47, 22 L. R. A. (*N. S.*) 1153. Prior to the adoption of the Arkansas Probate Code for application in the Indian Territory, the question of the proper court to order the sale of minors lands was before the Supreme Court of Arkansas and is styled, Reid et al. v. Hart, and reported in 45 Ark. 41. In the Hart case the minors lived in Scott county and the guardianship case was pending in that county. Upon application made by the guardian to the probate court of Clark County the latter court ordered the sale of the minors' land situated in that county. The minors had neither lived in nor had a guardianship

cause pending in Clark County. The grantees of the minors claimed by a conveyance, subsequent to the date of the guardian's deed, and commenced their action in ejectment against the vendee at the guardianship sale. It was the contention of the plaintiffs, that the probate court of Clark County was without jurisdiction to order the sale, and that the decree of sale should have been ordered by the probate court of Scott County. The statutes fixing venue as applied to the sale in the Hart case, required the guardian to make application for sale to the 'proper probate court.' There was not any act relating to venue, other that the Legislative act first referred to. In arriving at the meaning of the general phrase 'proper probate court,' the court said that in many instances it was likely that the lands of the minors would be situated in a county other than the place of residence. Hence, the purpose in the use of the general phrase, in order that venue might be given to the probate court of the county in which the land was situated. Before the cause was heard in the Supreme Court, the Legislature adopted Mansfield's Code which amended the former venue statute by providing that the decree of sale should be made by the probate court of the county in which the land was situated. The provision as amended, is designated as Section 3569, in Mansfield's Digest. The court pointed to the amended section as evidence that the Legislature in the first instance, by the use of the general phrase, intended that venue should be fixed in the probate court of the county in which the land was situated. We refer to the Legislative act as a venue statute, as the constitution vested all probate courts of the state with general probate jurisdiction, which is true as applied to the county courts of the State of Oklahoma. The court made the question, as to the right of the probate court appointing the guardian to order the sale, but said the question would not be passed upon until properly presented for decision. The act of

Congress of May 2nd, 1890 (26 Stat. 94 C. 182), extending that part of Mansfield's Digest over the Indian Territory, in relation to the estates of deceased persons, and minors, provided that the word "county" as used in the laws of Arkansas in their application in the Indian Territory, should be read as "district." Section 3569 Mansfield's Digest provided that the order of sale should be obtained from the probate court of the county in which the real estate, or the greater part thereof was situated. The greater part of the allotment of the decedent was situated in the Southern district. According to the construction placed upon this statute, prior to its adoption, the U. S. Court sitting at Ardmore was a proper court to decree the sale. While the U. S. Court sitting at Durant might have entertained a petition by the guardian for the sale, and ordered the sale, the question is not before us for decision. Apparently, under the provisions of Mansfield's Digest relating to the estates of minors, the Supreme Court of Arkansas has construed the act as fixing venue for the appointment of a guardian for minors, as being in the probate court in the county of the residence of the minor. *Norton* v. *Miller*, 25 Ark. 108; *McHarry* v. *Eatman*, 29 Okla. 50, 116 Pac. 935. In the application of the probate code as contained in Mansfield's Digest, to the estates of minors in the Indian Territory, the courts and Indian Department treated the statute as fixing venue in the probate court for the appointment of a guardian in either the county of residence, or the county in which the land, or the greater part thereof, was situated. This practice was followed from the time the probate code was extended over the Indian Territory until the admission of this state into the Union. Many titles rested upon proceedings had in guardianship causes pending in counties other than the residence of the minors. The practice had been followed so long that it had become to be considered as a rule of property. In view of this situation, when the question came before this court as to the proper court to make

the appointment of a guardian for minors, the statute was construed as authorizing the court sitting in the county of the residence, or in the county in which the greater part of the land was situated, as having authority to make the appointment. *McHarry* v. *Eatman*, *supra*. The holding in *Reid* v. *Hart*, *supra*, was that the probate court of the county in which the land was situated had jurisdiction to order the sale, although the guardianship cause was not pending in that county. The court did not pass upon the question of the jurisdiction of the probate court in which the guardianship cause was pending to decree the sale in *McHarry* v. *Eatman*, *supra*. This court decided in construing the Arkansas statutes that the probate court situated in the county of the residence of the minor, or the probate court of the county in which the land was situated, could lawfully make the appointment of a guardian for the minor. The questions decided by the two decisions are unrelated and the Eatmon case in no manner conflicts with the Hart case. The Eatmon case does not support the plaintiff's contention that the decree of sale must be made by the probate court in which the guardianship cause is pending. The Hart case supports the contention of the defendant that the probate court of the county in which the land is situated may order the sale, although the guardianship cause is not pending in that county. As the act adopting the probate laws of Arkansas included the construction placed thereon by the Hart case, this court is bound by the decision of the originating state. The plaintiffs fall into error in assuming under the Arkansas law, that the guardianship cause must be pending in the court granting the decree of sale, although Section 3589 made the power to enter the decree to depend upon the land being situated in the county of the domicile of the court. It is likely plaintiffs view gave rise to the practice followed in the Indian Territory, from the time of the adoption of the statute, in causing the appointment of guardians, in many instances, in the court

district where the land was situated. According to the statutes relating to the estates of minors, as extended over the Indian Territory, and as construed by the Supreme Court of Arkansas prior to the adoption, the U. S. Court sitting in the southern district was a court of competent jurisdiction to order the sale of the land, although the guardianship cause was pending in the U. S. Court sitting at Durant in the central district. As the U. S. Court sitting at Ardmore had jurisdiction to order the sale of the lands involved in this action at the time of the admission of this state into the Union, the county court of Carter County succeeded to all the jurisdiction which the Federal court held in the case. The county court of Carter County had jurisdiction to proceed with the sale to its completion as fully as if the guardianship cause had been pending in that court. As applied to the particular case, the effect of Section 19 of the Enabling Act (34 Stat. at L. 227), Section 23 of the schedule of the constitution and the statutes of Oklahoma was to fix venue in the county court of both Carter and Bryan counties. *DeWalt* v. *Kline*, 35 Okla. 197, 128 Pac. 121; *Eaves* v. *Mailes*, 25 Okla. 679, 107 Pac. 433; *Davis* v. *Carruthers*, 22 Okla. 323, 97 Pac. 581; *Bailey* v. *Jones*, — Okla. —, —Pac. —. The county court of Carter County was authorized to proceed with the sale until the cause was transferred to the county court of the proper county, in accordance with Session Laws of 1907-8 at page 212, approved March 12th, 1908. The jurisdiction of the sale proceeding acquired by the county court of Carter County, as successor to the U. S. District Court, excluded every other county court from exercising jurisdiction in that particular sale proceeding so long as the cause was pending in the county court of Carter County. *Leonard* v. *Childers*, — Okla. —, 170 Pac. 247; *Crosby* v. *Brewer*, — Okla. —, 158 Pac. 388; *Baird* v. *England*, — Okla. —, 205 Pac. 1098. From the agreed statement of facts, it appears that the order of sale was made in 1907 and a sale and return thereof

was made to the U. S. District Court during the time of the existence of the court. The confirmation was not made by the county court of Carter County until 1913. In respect to the long period of time intervening between the sale and return, and the date of confirmation, we can only say that the statutes do not prescribe the period of time in which the confirmation must be made after the return of sale, and as the interested parties do not complain, it is not for the court to question the matter. No question is made by the agreed statement of facts, as to any claimed irregularities, other than the want of jurisdiction in the U. S. District Court to decree the sale and of the county court of Carter County to confirm the sale. As the plaintiffs do not question the defendant's title upon grounds other than the want of jurisdiction in the two courts, the plaintiffs in error have failed to establish their right of recovery as against the defendant.

In this action, W. M. Patterson, husband of the deceased allottee, claims a courtesy interest of life estate in the lands involved. In answer to Patterson's claim, it is sufficient to say that the allottee did not become seized of the possession, or the right of possession, to the lands in controversy during her life time. In the several states which have given effect to the courtesy right, among the pre-requisite conditions to enjoy the right is the requirement that the wife should become seized of the title, or the right of possession to the particular land during her life time. The allottee did not select her allotment during her life time. She had merely enjoyed the right during her life time to select some particular tract of land from the allotable lands, subject to the conditions and requirements of the allotment acts of Congress. The right of selection grew out of her citizenship status and community rights in the lands of the nation of which she was a member, could not be more than an intangible or invisible property. Such property right could not be termed more

than an incorporeal hereditament or chattel real. *Priddy* v. *Thompson*, 204 Fed. 955. The absence of seizin in the wife during her life time prevented the right of courtesy from attaching to the particular real estate in favor of her husband. *Longest* v. *Langford*, — Okla. —, — Pac. —.

The judgment of the trial court in favor of the defendant being without error upon the agreed statement of facts, upon which the cause was submitted, it is recommended that the judgment be affirmed.

Shackelford and Dickson, CC., concur.

Filed in Supreme Court of Oklahoma Dec. 16, 1924. William M. Franklin, Clerk.

Filed in Supreme Court of Oklahoma, Dec. 29, 1924. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

PETITION FOR REHEARING.

Come now the plaintiffs in error and respectfully show to the court that the opinion rendered by this court in the above styled case on December 16, 1924, and the judgment rendered thereon by this court should be set aside and held for naught, and as grounds therefor allege and state:

ONE.

We think the court has overlooked some of the cases and argument advanced in the brief of plaintiffs in error and duly submitted by counsel in the original briefs filed herein. We think this oversight is apparent from the

language used by the learned commissioner in the opinion that has been handed down in this case. The decision does not correctly state the issues before the court as we understand the stipulation and agreed statement of facts upon which the case was tried. From the language embodied in the opinion it would appear that the court reaches the conclusion that the fact that the sale was not confirmed until 1913, and then by the County Court of Carter County, was not an issue in the case and was not complained of by counsel for plaintiffs in error in the lower court nor raised by the briefs in this court.

On page 4 of the opinion rendered by this Court we find the following language:

> "The agreed statement of facts presents but two questions of law, (a) jurisdiction of the United States District Court at Ardmore to take jurisdiction of the cause; and (b), the interest, if any, of W. M. Patterson as the surviving husband of the decedent in the property."

Again on page 9 we have the following language.

> "In respect to the long period of time intervening between the sale and return, and the date of confirmation, we can only say that the statutes do not prescribe the period of time in which the confirmation must be made after the return of sale, and as the interested parties do not complain it is not for the court to question the matter."

We respectfully insist that the court is in error in stating that no question is raised in regard to the long period of time intervening between the sale and date of return and date of confirmation. We think these matters were the very basis of the contest in both the district court and in this Court. On pages 15 and 16 of brief filed in behalf of plaintiffs in error we used the following language:

"Under the decisions to which we have referred, the guardianship sale made of the lands involved herein passed no title until confirmed, and as it is conceded that the confirmation was not had until 1913, the important question to determine is whether or not the confirmation had at Ardmore subsequent to statehood was such a confirmation as would pass title to the lands in question. We call the Court's attention to the fact that the statutes of Oklahoma provide that an order of sale shall not remain in force longer than one year. Section 6566, Revised Laws of 1910, reads as follows: 'No order of sale granted in pursuance of this article (Chapter) continues in force more than one year after granting the same, without a sale being had.'

"We are unable to understand how this sale could be a valid sale when the order of sale was made in 1907, and the order of confirmation was made in 1913. The statute limiting the time during which an order of sale remains in force applies to both public and private sales and is an express prohibition, the language of which is so plain as to be susceptible of but one construction, *and that is that no sale shall be valid unless confirmed within one year.*"

We specifically pointed out that under the laws in force after statehood the sale could not be confirmed except within one year. We quoted the statute applicable to the order of sale and we respectfully insist that the court is in error in saying that no question is raised as to the time intervening between the date of sale and date of confirmation. From the language used by the court in dealing with the question of confirmation, it appears that the court has overlooked all that portion of the brief of plaintiffs in error wherein it is insisted that the sale was void because confirmed several years after the date of the order and confirmed by a court which at that time was absolutely without jurisdiction of any guardianship

case of these minors. The court in this opinion states that the County Court of Carter County inherited jurisdiction by reason of the fact that this particular case was instituted in Federal Court at Ardmore prior to statehood. In this connection we call the court's attention to the fact that the County Court of Bryan County inherited jurisdiction of the probate case from the Federal Court and has never been divested of that jurisdiction in any proceeding to transfer the case to Carter County or to abate the case pending at Durant. There was never any guardianship case, according to the agreed statement of facts, pending in the United States Court at Ardmore wherein W. M. Patterson was guardian of these minors. The only jurisdiction that that court had was by reason of a petition filed by a guardian whose appointment was made in the Central District, and the only authority of W. M. Patterson to act as guardian was by virtue of the authority granted by the Federal Court at Durant. It is our opinion that the County Court of Bryan County inherited jurisdiction from the Federal Court, and the County Court of Carter County could not have inherited jurisdiction for the reason that there was never any probate case pending in that district prior to statehood.

The case of *DeWalt* v. *Kline* and other cases referred to by the court dealing with cases which had been instituted prior to statehood, are cases where there were proceedings instituted in the Federal Court prior to statehood as original probate proceedings. When statehood came there was no probate case pending on the docket of the Federal Court at Ardmore wherein these minors were under guardianship, but there was a case pending in the Federal Court at Durant and acting on the authority of that appointment W. M. Patterson, as guardian, had filed his petition to sell lands in the Southern District. That a confirmation of the sale was absolutely indispensable to its validity is clear from both the decisions of this court and of the Supreme Court of the

State of Arkansas. We call the court's attention to those cases cited in the original brief, filed in behalf of plaintiffs in error, which hold that a confirmation is necessary.

In the case of *Apel* v. *Kelsey*, 47 Ark. 419, quoted in our original brief, it is said:

> "But, so far as appeared, the sale had never been confirmed.
>
> "Now, a judicial sale passes no title until it is confirmed; and confirmation will not be presumed, but must be shown."

To the same effect is the case of *Alexander* v. *Hardin*, 54 Ark. 480, wherein the court uses plain, explicit and unmistakable language. In speaking of the necessity of a confirmation it is said:

> "A guardian's deed, executed in pursuance of an unconfirmed guardian's sale, passes no title."

Again in *Lumpkins* v. *Johnson*, 61 Ark. 60, it is said:

> "The guardian's sale, without confirmation by the probate court, passed no title."

This court has in a number of cases adhered to the same rule and practically the same language appears in all of the cases since *Eaves* v. *Mullen*, 25 Okla. 679, down to the case of *Drennan* v. *Harris*, 161 Pac. 781, and the other recent cases. In the case of *Lumpkins* v. *Johnson*, Mr. Justice Hayes, in speaking of the necessity of a confirmation, said:

> "A valid decree of confirmation of the sale was necessary to pass title to the purchaser at the same."

In *Drennan* v. *Harris*, it was said:

> "The order of sale and the order of confirmation

are both judicial acts and these two orders concurring make a judicial sale."

Assuming that the Federal Court at Ardmore had the authority under the Arkansas statute in force prior to statehood to entertain a petition to sell lands, still it is apparent from the record here that the order of sale rendered by that court remained dormant until 1913, when the purchaser filed a return of the same and an order was rendered confirming it by a court which then had no case pending upon its dockets wherein a guardian was authorized to act for these minors. We do not understand on what theory of law the County Court of Carter County could confirm a sale when it is conceded that there was no probate case on its dockets, nor any case which it had inherited from the Federal Court prior to statehood.

If the court adheres to the rule announced in *Parmenter* v. *Rowe*, 200 Pac. 683, and the case of *State* v. *Hazlewood*, 81 Okla. 69, the County Court of Carter County was without jurisdiction to confirm the sale for the reason that the County Court of Bryan County was the court that succeeded to the jurisdiction that had theretofore existed in the Federal Court, and the County Court of Bryan County had exclusive jurisdiction coextensive with the state. These matters are admitted as we understand the agreed statement of facts, and were argued and insisted upon in the briefs filed in the lower court and in the briefs filed in this court.

We respectfully insist that the court overlooked the argument advanced by counsel for the plaintiffs in error on these questions of law involved in this case. If the County Court of Carter County had succeeded by inheritance to the jurisdiction that had existed in the Federal Court, then we insist that the confirmation could not have been made by that court after the expiration of one year, but in the very nature of things the County Court of Carter County could not act, as we view the

case, for the plain and all-sufficient reason that there was no probate case pending in that court wherein a guardian was authorized to act for these minors. In the original brief filed in behalf of plaintiffs in error the point was made that no case was pending at Ardmore in 1913, or any other time subsequent to statehood, and the language used in the brief on pages 15, 16 and 17 support our statement that we complained of these matters at all times during the history of this case. We respectfully submit that an order of confirmation could not have been entered in 1913, for the reason that no statute of the state authorizes a confirmation after the expiration of one year. As we understand the statute authorizing sales of minors' and deceased persons' estate, an order for private sale is in force for six months and an order for public sale is in force for one year. Section 6566, Revised Laws of 1910, in force when this sale was confirmed in 1913, specifically provides that no order of sale shall remain in force more than one year after the granting of the same without a sale being had.

In the case of *Winters v. Oklahoma Portland Cement Company*, 164 Pac. 988, in speaking of the necessity of an appraisement at private sale, the court used the following words:

> "The words of this section are expressly prohibitory. They do not simply and only say that an appraisement shall be had, but directly say that the court shall not act except under the given conditions. The inhibition strikes at the power of the court, and leaves no discretion whatsoever in the court."

It might be said with equal force that the County Court of Carter County was without power to confirm the sale for the reason that no order of sale had been entered within one year prior to the date of confirmation of said sale. There was not only no order of sale entered in the County Court of Carter County, but there was no case pending on its dockets giving that court authority

to act. As was said in *Winters* v. *Oklahoma Portland Cement Co.*, the jurisdictional invalidity of the order of confirmation is shown by the record of the sale proceeding, and the court said that where the record in the case affirmatively discloses the facts to be such that the court was without power in such case to make the order or decree it assumes to make, the order or decree is void and is subject to collateral attack. *Roth* v. *Union National Bank*, 160 Pac. 505.

The agreed statement of facts, upon which the case was tried, discloses that W. M. Patterson was acting as guardian of these minors by virtue of his appointment in the Central District, and when statehood came the County Court of Bryan County became the successor to the probate case which had been instituted prior to statehood in the Federal Court at Durant. We do not think there could be such a thing as two courts within the state having the power to exercise control over the estates of these minors at one and the same time. The County Court of Carter County, according to the admissions in the agreed statement of facts, assumed to act at a time when there was not only no case pending upon its dockets, but when there was a case pending in another court within the State of Oklahoma. If the court adheres to the rule announced in this case, it seems to us that it will be necessary to reverse the case of *Parmenter* v. *Rowe* and *State* v. *Hazelwood*, and the other cases which hold that when once a court acquires jurisdiction in a guardianship or administration case, that jurisdiction is co-extensive with the state and exclusive of all other courts.

We respectfully insist that the court is in error in holding that the confirmation of the sale in Carter County in 1913 was a valid order, and that these plaintiffs cannot recover the lands involved herein.

TWO.

The court reaches the conclusion that the surviving husband of Emma Patterson took no interest in the lands that were allotted to her after her death, and that the said W. M. Patterson has no interest in the subject matter involved in this suit. The court cites as an authority *Pridy v. Thompson*, 204 Fed. 953, and *Longest v. Langford*, No. 11,500. We respectfully insist that the rule announced in *Longest v. Langford* is directly in conflict with *Ned v. Countiss*, 84 Okla. 138; *Morris v. Sweeney*, 53 Okla. 163; *Cook v. Childs*, 49 Okla. 321, 152 Pac. 88; *Harris v. Bell*, 235 Fed. 626; *Shulthis v. McDougal*, 170 Fed. 529.

In the case of *Shulthis v. McDougal*, decided by the Circuit Court of Appeals, it is said:

> "If any significance is to be given to it as used in this section, it must be held that the intent of the parties to the agreement was that the land should pass to the same persons and in the same proportions as it would have passed if the child had died seized of it."

Again, on page 532, we have the following language in the same case:

> "Whether the ancestor was actually seized of the property or not in his lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment. The tribe was not bestowing such land as a bounty, but was simply providing for the right of inheritance."

In this connection we respectfully call the court's attention to the briefs filed in behalf of petitions for rehearing in the case of *Longest v. Langford*, No. 11,500, in which case counsel for the plaintiff in error in this

court have appeared as counsel and filed a brief in that case, and we respectfully invite a reading of the brief and authorities cited in behalf of the first and second petitions for rehearing in case No. 11,500. We do not feel that it is necessary to restate here and repeat what will be found in the briefs and arguments filed in that case, but we think the court is in error in the rule announced in *Longest v. Langford*, and that the error has been perpetuated in the opinion handed down in the present case.

We respectfully insist that the opinion rendered by the learned commissioner in this case should be set aside, and that the plaintiffs in error should be awarded judgment for all relief prayed for herein.

Hatchett & Semple,
Attorneys for Plaintiffs in Error.

Filed in Supreme Court of Oklahoma, Jan. 7, 1925. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Jones, Defendant in Error. No. 12,797.

Order Denying Petition for Rehearing.

The plaintiffs in error, who are minors, resided with their father, W. M. Patterson, prior to statehood, in what is now Bryan County. W. M. Patterson was appointed guardian of the plaintiffs in error by the Federal Court, sitting at Durant, in the Central District. The minors owned inherited lands situated in the Southern District, and in what is now Carter County. The guardian made application to the Federal Court prior to statehood for the sale of the lands situated in the Southern District, the application being made to the Federal Court, sitting in

the Southern District at Ardmore. The court at Ardmore ordered the sale of the lands, the land was sold under the order of the court and return made by the guardian of the sale of the land and filed in the court prior to statehood and in the early part of 1907. The cause in connection with the sale of the land was pending in the Federal Court, sitting at Ardmore, when statehood came into existence. The Enabling Act and Section 23 of the schedule of the constitution vested jurisdiction of the subject matter in the County Court of Carter County and provided that the latter court should succeed the Federal Court, sitting at Ardmore in the Southern District, in the exercise of the jurisdiction then being administered by the Federal Court.

Section 13 of Article 7, and Section 12 of Article 7, in the nature of a limitation to Section 13, *supra*, granted jurisdiction to the County Court of Bryan County over the same subject matter, in that the sections authorized the County Court of Bryan County to appoint guardians for minors residing in the county and authorizing the court to sell lands owned by such minors. The guardianship cause of the plaintiffs in error was pending at all times mentioned herein in the Federal Court, sitting at Durant in the Central District, and in the County Court of Bryan County. The County Court of Carter County, in 1913, confirmed the sale made under order of the Federal Court, sitting at Ardmore, and the guardian executed his deed to the defendant in error pursuant to the order of confirmation.

The plaintiffs in error rested their right to recover upon the single proposition that the Carter County Court did not have jurisdiction of the subject matter. The plaintiffs in error assert that the County Court of Bryan County had exclusive jurisdiction of the subject matter. The plaintiffs in error reach this conclusion by asserting that the pendency of the cause in Bryan County had the effect of destroying the constitutional grant of jurisdic-

tion to the County Court of Carter County. The Federal Court, sitting at Ardmore, was authorized to entertain an application to sell the land, although the guardianship cause was pending in a Federal court in another district. *Reed* v. *Hart*, 45 Ark. 41.

The answer to the contention of the plaintiffs in error that the pendency of the cause in Bryan County destroyed the constitutional grant of jurisdiction to Carter County is that the constitutional grant of jurisdiction to both courts was made without limitations. The constitution does not provide that the exercise of jurisdiction by one of the courts shall destroy the constitutional grant of jurisdiction to the other court. The plaintiffs in error in their petition for rehearing now say that the delay between the sale and return and the order of court confirming the sale destroyed the jurisdiction. The answer to this is that the constitution does not so provide in granting jurisdiction. But the truth is the plaintiffs in error are now raising questions by collateral attack which cannot avail as the Carter County Court had jurisdiction. The plaintiffs in error made the test the question of Carter County Court not having jurisdiction. Since the latter court had jurisdiction of the subject matter by constitutional grant, it follows that their contention is not true.

It is recommended that petition for rehearing be denied.

J. W. Shackleford, Commissioner.

Filed in Supreme Court of Oklahoma, Jan. 9, 1925. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. L. S. Joines, Defendant in Error. No. 12,797.

SECOND PETITION FOR REHEARING.

Come now the plaintiffs in error and for their second petition for rehearing respectfully show to the court:

That the opinion rendered by the court in this cause on December 16, 1924, should be amended, set aside and reversed and a judgment rendered herein in behalf of the plaintiffs in error, and as grounds therefor these plaintiffs in error respectfully show to the court:

FIRST.

That the court denied petition for rehearing in this cause on January 7th, 1925, at a time when the plaintiffs in error had an application pending for oral argument of said petition for rehearing and without having had an opportunity to consider the questions of law presented by said petition as fully as plaintiffs in error believe that said questions should be considered by the court.

That the opinion rendered by the learned commissioner and filed herein on December 16, 1924, contains an erroneous statement of the contentions of plaintiffs in error and overlooks material parts of the brief of plaintiffs in error, and these matters could not have been considered as fully and as carefully as the said questions warrant in the original petition for rehearing filed herein, and that said original petition for rehearing was denied without any action having been taken upon the application for oral argument which has been filed by plaintiffs in error.

SECOND.

Plaintiffs in error further respectfully show to the court that the language embodied in the opinion as filed

herein discloses that the court reached the conclusion announced in the case without being aware of the fact that the plaintiffs in error contended that the sale confirmed at Ardmore, Oklahoma, in 1913, was void because the County Court of Carter County at that time did not have pending upon its dockets a probate case wherein said minors had a guardian acting for them, and because more than one year had elapsed since the date of the order of sale. Plaintiffs in error believe the law to be that the court is without jurisdiction to confirm a guardianship sale after the expiration of one year from the date of the order of sale as to public sales and six months from the date of the expiration of an order for private sale. Plaintiffs in error show to the court that the confirmation in this case was made in 1913, whereas, the order of sale on which it was based was made by the Federal Court prior to statehood.

In this connection plaintiffs in error respectfully ask that the court reconsider the cases cited by plaintiffs in error in the first petition for rehearing filed herein. Plaintiffs in error further state that in addition to the authorities heretofore cited, they expect to file, and will file, at as early a date as possible further citation of authorities in support of this second petition for rehearing, and plaintiffs in error ask that the application for oral argument heretofore filed in connection with the first petition for rehearing be considered as being filed in support of this petition for rehearing, and that an order be made setting the case for oral argument.

Wherefore, plaintiffs in error pray that the opinion rendered by the learned commissioner in this case be withdrawn, reversed and set aside, and that a judgment be rendered in favor of plaintiffs in error as prayed for herein.

Respectfully submitted,

Hatchett & Semple,
Hayes & McIntosh,
Attorneys for Plaintiffs in Error.

And thereafter, on the 3rd day of February, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry of Submission, which said journal entry is recorded in Journal No. 12 at page 470, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1924, February 3rd, 1925, Ninth Judicial Day.

United States of America, State of Oklahoma, ss:

Be it remembered that on this Feb. 3, 1925, Supreme Court convened pursuant to adjournment of Jan. 27, 1925.

Present: G. M. Nicholson, Chief Justice; E. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * *

12,797. W. M. Patterson et al., vs. U. S. Joines.

* * * * * * * *

And now on this day the above cause is submitted on the record and briefs filed therein.

* * * * * * * *

Journal 12, page 470.

And thereafter on the 21st day of April, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma, Journal Entry Granting Petition to Rehear, which said journal entry is recorded in Journal No. 12 at page 501, and is in words and figures as follows, to wit:

Supreme Court, April Term, 1925, April 21st, 1925, Second Judicial Day.

United States of America, State of Oklahoma, ss:

Be it remembered that on this April 21, 1925, Supreme Court convened pursuant to adjournment of Apr. 14th, 1925.

Present: Geo. M. Nicholson, Chief Justice; J. B. Harrison, F. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * *

12,797. W. M. Patterson et al., vs. U. S. Jones.

* * * * * * * *

And now on this day it is ordered by the court that the petition for rehearing, filed in the above cause be, and the same is hereby granted.

* * * * * * * *

Journal 12, page 501.

And thereafter on the 14th day of July, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma, Journal Entry of Opinion, which said journal entry is recorded in Journal No. 12 at page 535.

Supreme Court, June Term, 1925; July 14th, 1925, Sixth Judicial Day.

United States of America, State of Oklahoma, ss:

Be it remembered that on this July 14th, 1925, Supreme Court convened pursuant to adjournment of July 7th, 1925.

Present: Geo. M. Nicholson, Chief Justice; J. B.

Harrison, C. W. Mason, F. Riley, J. I. Phelps, E. F. Lester, J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * *

12,797. W. M. Patterson et al., vs. U. S. Joines. Opinion by Clark, J.

* * * * * * * *

And now on this day the above cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed and the cause remanded with directions to proceed consistent with the opinion filed therein.

* * * * * * * *

Journal 12, page 535.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

SYLLABUS

1. The surviving husband of a deceased Choctaw Indian woman who was duly enrolled, but died before receiving her allotment, is entitled to curtesy in said lands under the facts stated in the opinion.

2. A guardian appointed for minors by the United States Court of the Central District at Durant, Oklahoma, and said proceedings pending in said court at the time of admission of the state, was, by Section 19 of the Enabling Act, June 16, 1906, and Section 23 of the Schedule of the Constitution, transferred to the County Court of Bryan County, in which was located the court in which the said cause was pending; and the County Court of Bryan County, as successor to the United States Court of the Central District at Durant, acquired jurisdiction of this guardianship matter, with power to sell and convey all lands belonging to said minors within the State of Oklahoma. And this jurisdiction was exclusive of every other county court in the State of Oklahoma.

3. The statute of limitations does not begin to run against the owners of remaining interest in land until the life estate has terminated.

4. Under Section 1479, C. O. S. 1921, which provides: "No order of sale granted in pursuance of this article (chapter) continues in force more than one year after granting the same, without a sale being had." *Held*, that an order of sale made in 1907 by the United States Court at Ardmore and approved and confirmed by the County Court of Carter County on the 14th day of July, 1913, was in violation of this section of the statutes and void and of no force and effect.

Appeal from the District Court of Murray County. T. P. Clay, Judge.

Action by W. M. Patterson et al. against U. S. Joines to quiet title in plaintiffs to real estate described in petition of plaintiffs. The plaintiffs bring error. Reversed.

Hatchett & Semple, attorneys for plaintiffs in error; Wm. G. Davisson, attorney for defendant in error.

Clark, J.

The plaintiffs in error instituted this suit in the

District Court of Murray County against the defendant in error, U. S. Joines, for the recovery of the allotment of Emma Patterson, deceased. The case was tried in the lower court upon an agreed statement of facts.

The facts necessary for the determination of this cause are as follows: Emma Patterson dies intestate on the 14th day of March, 1906, and the lands involved herein were allotted to her after her death. She was survived by her husband, W. M. Patterson, and the following children: Doroth A. McFarland, nee Patterson, 26 years and 8 months old; Shelby A. Patterson, 23 years and 8 months old; Howell M. Patterson, 20 years and 8 months old; J. Allen Patterson, 17 years and 6 months old, and Ruby F. Patterson, 15 years and 3 months old. The above being the age of said plaintiffs on the 20th day of December, 1920. The petition alleged that W. M. Patterson took the life estate in the land of his deceased wife, and that the children of the said Emma Patterson inherited the fee simple title to said land, subject to the life estate of W. M. Patterson, the said children being of one-eighth Indian blood, and the said W. M. Patterson is not of Indian blood.

The defendant answered and denied that said W. M. Patterson, husband of said Emma Patterson, was one of the heirs of the said Emma Patterson, aforesaid, as in said petition charged, or that he was entitled to a life estate in said land. The defendant admitted that the children above named were the heirs of the said Emma Patterson. Further answering, the defendant said that the lands described in plaintiffs' petition were filed after the death of the said Emma Patterson, and asserted title to said land by virtue of a guardian's deed executed on the 5th day of October, 1907, by said W. M. Patterson, as guardian of the Patterson children. And further answering, the defendant claimed ever since the 5th day of October, 1907, to have been in possession of said land; and that thereafter, and on about the 5th day of August,

1913, in order to correct said errors of description of said former deed, a subsequent deed was executed by the said W. M. Patterson, as guardian, in favor of this defendant; that said conveyances were duly, orderly and regularly approved by the probate court having jurisdiction of said estate, and were in all things sufficient to, and did, convey all the titles of the said heirs of Emma Patterson to this defendant. Defendant further answering, and by the way of estoppel against W. M. Patterson, pleaded that the said W. M. Patterson held himself out as guardian of the said minor children aforesaid, and represented to the defendant that said children were the sole heirs of the said Emma Patterson, deceased, and that by reason thereof he was estopped from setting up any claim or any interest in and to said land. Defendant pleaded the Statute of Limitations, Section 4654, the laws of the State of Oklahoma 1910, and also Section —, Mansfield's Digest of the law of Arkansas.

It appears from the agreed statement of facts that W. M. Patterson was appointed guardian of the above named Doroth A. McFarland Patterson on December —, 1904, and of Shelby A. Patterson and Howell M. Patterson on the 19th day of September, 1904, and of J. Allen Patterson and Ruby E. Patterson on the 22nd day of April, 1907, in the United States District Court of the Central District of Indian Territory at Durant. And that on the 24th day of April, 1907, W. M. Patterson, as duly qualified and acting guardian of the persons and estates of the above named minors, filed in the United States Court for the Southern District of Indian Territory at Ardmore, a petition for the sale of the lands involved in this litigation. That on the 2nd day of May, 1907, the United States Court, sitting at Ardmore, Indian Territory, in said Southern District, entered its order authorizing said guardian to sell said land. That on the 8th day of October, 1907, said W. M. Patterson, as guardian of said minors, filed in the United States

District Court at Ardmore, his report of the sale, which shows that W. M. Patterson, as such guardian, sold said lands on the 5th day of July, 1907, to the defendant, U. S. Joines, for the sum of $2,580 and requested that said sale be confirmed. On the 5th day of October, 1907, W. M. Patterson, as guardian of said minors, executed a guardian deed to the defendant, U. S. Joines. The agreed statement of facts further show that on the 14th day of July, 1913, the County Court of Carter County of the State of Oklahoma, entered an order confirming sale of said real estate by said guardian, and that on the 5th day of August, 1913, W. M. Patterson, as guardian of said minors, executed a guardian deed of said land to said defendant, U. S. Joines.

The trial court's conclusions of law are as follows:

"I find that W. M. Patterson, upon the death of his wife, Emma Patterson, acquired a life estate or estate by curtesy in the land in controversy. I find further that the interest acquired by him is barred by the seven years' statute of limitations of the Arkansas law then in force in the Indian Territory, the lands having been sold and report thereof having been made in 1907, prior to the time said Territory became a part of the State of Oklahoma.

"Second. I further find that by the acts and conduct of said W. M. Patterson, that he was estopped to bring this action by reason of his conduct in putting defendant in possession at the time of sale of his wards' interest and allowing him to remain in possession for fourteen years without complaint.

"Third. I find that the Southern District of the Indian Territory had jurisdiction to authorize the guardian's sale and the confirmation thereof by the County Court of Carter County was not void, and that plaintiffs are not in position to attack the same collaterally.

"Fourth: I find that the minor heirs were authorized to sell through their guardian without joining any adult heirs, there being no adult heirs at that time.

"Fifth: I find that all adult heirs, to wit: Doroth A. McFarland and Shelby Patterson are barred by the statute of limitations and resolve all issues in favor of the defendant."

The court rendered judgment for the defendants, and plaintiffs prosecute error to this court.

The first question in this case: "Did W. M. Patterson, the husband of Emma Patterson, take an estate by curtesy in said land?" This land was allotted to Emma Patterson by virtue of the Act of Congress, approved July 1, 1902, known as the Supplemental Agreement. Section 22 of said act provides:

"If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in Chapter 49 of Mansfield's Digest of the Statutes of Arkansas."

In the case of *Shulthis v. McDougal et al.*, 95 C. C. A. Reports 615, the Circuit Court of Appeals had this act of Congress under consideration and in the body of the opinion said:

"Whether the ancestor was actually seized of the property or not in his lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment."

In the case of *Ned et al. v. Countiss et al.*, 84 Okla. 138, 203 Pac. 168, this Court, speaking through Mr. Justice Nicholson in the second syllabus of said opinion, said:

> "The law of descent in force at the date of the certificate of allotment to a member of the Choctaw Tribe of Indians is the governing law, and this law relates back to the death of the Indian entitled to take the allotment, and identifies the heirs as of that date, and such law should be applied as if the deceased had received title to his allotment and died seized thereof."

In the case of *Morris et al. v. Sweeney et al.*, 53 Okla. 163, 155 Pac. 537, by Mr. Justice Hardy, the first syllabus reads as follows:

> "The surviving husband of a deceased full-blood Mississippi Choctaw Indian woman who was duly enrolled, but who died before receiving patent to her allotment, is entitled to curtesy in said lands, under the facts stated in the opinion."

W. M. Patterson having been lawfully married to Emma Patterson, and children having been born alive of the marriage, he would be entitled to an estate by curtesy in the allotment of his deceased wife, under the law in force at the date of her death. *Johnson et al. v. Simpson*, 40 Okla. 413, 139 Pac. 129; *Pierce et al. v. Ellis et al.*, 51 Okla. 719, 152 Pac. 340; *Cook et al. v. Childs et al.*, 49 Okla. 321, 152 Pac. 88.

The next proposition: "Did the guardian deed, executed by W. M. Patterson on the 5th day of October, 1907, convey any interest in said lands to the defendant, U. S. Jones?" We think not, for the reason that the sale had not been confirmed, and before the guardian could execute a valid deed said sale must be confirmed. And it is agreed in this case that the only confirmation of sale of said land was by the County Court of Carter County on the 14th day of July, 1913. In the case of

Reed et al. v. Hart, 45 Ark. 41, the third syllabus reads as follows:

> "Sales of real estate under orders of the probate court pass no title until confirmed by the court. The recital of confirmation in the purchaser's deed is *prima facie* evidence of the fact, if the deed be properly acknowledged and recorded."

So this deed being executed without any confirmation of sale by the United States Court of the Southern District at Ardmore, was void and of no effect and passed no title to the lands involved herein.

The question is raised by plaintiffs in error that the United States Court of the Southern District at Ardmore did not have jurisdiction to order the sale of this land, for the reason that the guardian was appointed by the United States Court of the Central District at Durant, and said guardianship matters at all times were pending in said court. We think this case can be disposed of without passing on this question.

The next question: "Did the County Court of Carter County have jurisdiction to confirm this sale?" Which order of confirmation was made on the 14th day of July, 1913, and in pursuance thereto a guardian deed was executed on the 5th day of August, 1913. No authorities have been called to our attention that passes squarely on this proposition. Here we are confronted with two courts of the State of Oklahoma as successors to the Federal Court, which had jurisdiction of these matters prior to statehood. The County Court of Bryan County, as a successor to the United States Court of the Central District at Durant, succeeded to and became vested with jurisdiction of this guardianship matter that was pending in the Federal Court of the Central District prior to statehood.

In the case of *Harvey v. Mullen*, 25 Okla. 679, 107 Pac. 433, in the first syllabus this court said:

"A guardianship proceeding pending in one of the United States courts of the Indian Territory at the time of admission of the state was, by Section 19 of the Enabling Act (Act June 16, 1906, c. 3335, 34 Stat. 277), and Section 23 of the Schedule of the Constitution, transferred to the county court of the county in which was located the court in which the case was pending."

Under this holding the County Court of Bryan County, as successor to the United States Court of the Central District at Durant, acquired jurisdiction of this guardian and guardianship matter, with power to sell and convey all lands belonging to said minors within the State of Oklahoma. And this jurisdiction was exclusive of every other county court in the State of Oklahoma.

It is contended by the defendant in error that the County Court of Carter County was the successor to the Federal Court in this sale proceeding. To agree with this contention would mean that two county courts in Oklahoma would have jurisdiction of the same minors and jurisdiction to sell the same tract of land. With this contention we cannot agree.

The procedure provided by the Arkansas statutes in force before statehood in the Indian Territory provided that sale of minors' land should be made by the court in whose jurisdiction the land lay. This was an ancillary proceeding to the main guardianship matter, was a matter of procedure for the sale of land by guardian. And as the sale had not been consummated and confirmed by the United States Court prior to statehood, we are of the opinion that after statehood and the laws of Oklahoma became effective, that this procedure was changed, and that the County Court of Carter County was without jurisdiction to confirm said sale. For the reason that the County Court of Bryan County has exclusive jurisdiction of this guardianship matter

Section 1479, C. O. S. 1921, same being Section 6566 Rev. Laws of 1910, reads as follows:

> "No order of sale granted in pursuance of this article (chapter) continues in force more than one year after granting the same without a sale being had."

This section of the statutes was in force and effect at the date the County Court of Carter County attempted to confirm this sale. Approximately six years having elapsed since this attempted sale, and as no sale had been confirmed, no sale had been consummated; and the action of the county court in attempting to confirm the sale made six years prior to the date of confirmation, was a contravention of this statute. We are of the opinion that the order of the confirmation made by the County Court of Carter County on the 14th day of July, 1915, is void and of no effect, and that the deed made in pursuance thereof on the 5th day of August, 1913, is void and of no effect.

It is next contended by the defendants in error that W. M. Patterson was barred by the seven years' statute of limitations provided for in Mansfield's Digest. With this contention we cannot agree. For the reason that the agreed statement of facts show that W. M. Patterson had made no deed to any interest that he owned in said real estate, and that the purported guardian deed of October 8, 1907, having been executed without said sale being approved and confirmed by the court, was absolutely void on its face and did not attempt to convey any interest of W. M. Patterson, and was insufficient to convey any title or to set the statute of limitations in operation as to W. M. Patterson.

It is next contended that certain of the plaintiffs who had attained majority are barred by the statutes of limitations of Oklahoma. Having held that W. M. Patterson, the husband, took the curtesy right in the land of his deceased wife, then would the statute of limitations

run against the children who took the remainder? In the case of *Orthwein* v. *Thomas*, 127 Ill. 554, 11 Am. St. Rep. 159, the Supreme Court of Illinois in discussing a case parallel with the facts in this case said:

> "Until the death of the life tenant, no statute of limitations began to run against the heirs of Susannah Osborn or their grantees; and laches can only be imputed to them from the time their right of entry accrued."

Jackson v. *Johnson*, 15 Am. Dec. 433.

We therefore must conclude that the statute of limitations does not begin to run against the plaintiffs who own the remainder interest in said land until the life estate has terminated.

The cause is therefore reversed and remanded, with direction to enter judgment for plaintiffs.

Mason, Phelps, Lester, Hunt and Riley, JJ., concur.

Filed in Supreme Court of Oklahoma, July 14, 1925. William M. Franklin Clerk.

CERTIFICATE OF CLERK.

I, William M. Franklin, Clerk of the Supreme Court of Oklahoma, do hereby certify that the foregoing 9 pages, numbered from 1 to 9 inclusive, is a full, true and complete copy of the opinion of said Court in the above entitled cause, as the same remains on file in my office.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court, at Oklahoma City, this 4th day of February, 1926.

WM. M. FRANKLIN,

(Seal) *Clerk of the Supreme Court of Oklahoma.*

(Filed in Supreme Court of Oklahoma Jul. 27, 1925. William M. Franklin, Clerk.)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. Case No. 12,797.

Petition of Defendant in Error for Rehearing.

Comes now U. S. Joines, defendant in error in the above styled cause, and respectfully represents to the Court that on the 14th day of July, 1925, a decree and judgment was rendered by this court in said cause reversing the judgment of the trial court and the former judgment of this court herein rendered affirming the judgment of said trial court, and by said judgment resolving all issues in favor of the plaintiff in error and against the defendant in error.

(a) In said last mentioned judgment this court held in effect that the surviving white husband of a deceased Choctaw Indian woman who died on the 14th day of May, 1906, prior to selecting or receiving her allotment of tribal lands, and prior to statehood, and whose allotment was selected and filed by her husband as administrator after her death, and who at the time of her death left surviving a number of children by said white husband, had a life estate by courtesy in said allotment of said deceased wife.

(b) The court further held in effect that where prior to statehood a guardian was appointed by the United States Court for the Central District of Indian Territory sitting at Durant, and where pursuant to the Arkansas Statute the said guardian so appointed went into the United States Court for the Southern District of Indian Territory sitting at Ardmore and instituted proceedings for the sale of lands belonging to said minors and situated in said Southern District, and where after all proceedings looking to the sale of said property had been had except the entry of the order of confirmation when statehood intervened, that the Coun-

ty Court of Carter County as the successor in jurisdiction to the said Federal Court for the Southern District of Indian Territory did not succeed to the jurisdiction of said Federal court to confirm said sale, but that the County Court of Bryan County sitting at Durant succeeded to such jurisdiction, and that the order of the County Court of Carter County purporting to confirm such sale was an absolute nullity.

(c) The court further held in effect that in the sale of the guardianship lands involved in this action the order confirming such sale must have been made within one year after the date of the order of sale, and that if not so made there was no sale and that an order of confirmation entered after the expiration of said one year is an absolute nullity.

(d) The court further held in effect that where the plaintiff in error, Wm. M. Patterson, acting as guardian of the minor children of Emma Patterson, the allottee, purported to sell the lands involved herein to the defendant in error in July, 1907, and then and there accepted from such defendant in error the purchase price of said land, and the defendant in error then and there went into possession of said lands and remained in undisputed possession thereof continuously from July, 1907, down to the present date, that the Arkansas seven year statute of limitations did not run as against the claim of the said W. M. Patterson to a life estate in said land.

(e) The court further held in effect that the statute of limitations did not run as against the claim of the other plaintiffs in this action aside from W. M. Patterson, whose interest in said land had been conveyed by the said W. M. Patterson as guardian, and which said plaintiffs came of full legal age more than two years prior to the filing of this action in the lower court.

(f) Now, your petitioner respectfully represents that in arriving at the conclusions hereinbefore set forth

your Honorable Court overlooked questions decisive of the case, and duly submitted by counsel, as follows, to wit:

1st. In holding that the plaintiff in error, W. M. Patterson, had a life estate in the lands involved in this action, the court overlooked and failed to consider the proposition specifically raised in the pleadings of the defendant in error and wholly supported by the evidence in this case, that W. M. Patterson is estopped to have or to maintain this action against the defendant in error or to now assert or claim a life estate in said property, for the reason that during the year 1907 he held out to the defendant in error, and to the world at large, that the children of Emma Patterson, for which he was the legal guardian, and who are the other plaintiffs in error in this case, were the owners of said property; he did not claim or assert in his own name a life estate or any other interest therein and he sold the said lands to the said defendant in error as the property of the said minor children of the said Emma Patterson, and accepted from the defendant in error the purchase price thereof in the sum of $2,000.00, and thus misled the said defendant in error to his prejudice and caused him to part with the purchase price of said lands, and therefore if the said W. M. Patterson ever had any right to a life estate in said property he is estopped by his own conduct and by his own actions to now assert such title or interest.

(g) Your petitioner further respectfully represents that said decision rendered by this court on the 14th day of July, 1925, conflicts both with express statutory and constitutional provisions, and with former controlling decisions of this court which have been overlooked by the court in arriving at its conclusions herein, as follows, to wit:

1st. The court overlooked the plain and specific provisions of Sections 3509, 3510 and 3511 of Mans-

field's Digest of the Statutes of Arkansas, which were the statutory provisions governing the guardianship sale in question prior to statehood, and under which the United States Court for the Southern District of Oklahoma alone had jurisdiction to make a sale of the lands of minors located in said Southern District. These provisions read as follows:

> "Sec. 3509. When it shall appear that it would be for the benefit of a ward that his real estate, or any part thereof, be sold or leased, and the proceeds put on interest, or invested in productive stocks or in other real estate, his guardian or curator may sell or lease the same accordingly upon obtaining an order for such sale or lease from the court of probate of the county in which such real estate, or the greater part thereof, shall be situate.
>
> "Sec. 3510. To obtain such order, the guardian or curator shall present to the court a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded.
>
> "Sec. 3511. If, after a full examination on the oath of creditable and disinterested witnesses, it appears to the court that it would be for the benefit of the ward that the real estate, or any part of it, should be sold or leased, the court may make an appropriate order for such sale or lease, under such regulations and conditions, subject to the provisions of this chapter in relation to the sale of real estate of minors, as the court shall consider suited to the case, first requiring the guardian or curator to enter into good and sufficient bonds to make such leases and conduct such sales with fidelity to the interest of his ward and faithfully to account for the proceeds of such sales and leases according to law and as the order of the court may require."

2nd. The court overlooked and failed to consider the specific provisions of Sections 19 and 20 of the

Enabling Act under which the State of Oklahoma was admitted as a state, which read as follows, to wit:

"Sec. 19. Courts of Original Jurisdiction, Dockets, Etc. That the courts of original jurisdiction of such state shall be deemed to be the successor of all courts of original jurisdiction of said territories and as such take and retain custody of all records, dockets, journals, and files of such courts except in causes transferred therefrom, as herein provided; the files and papers in such transferred cases shall be transferred to the proper United States Circuit or District Court, together with a transcript of all book entries to complete the record in such particular case so transferred.

"Sec. 20. That all causes, proceedings and matters, civil or criminal, pending in the District Courts of Oklahoma Territory, or in the United States Courts in the Indian Territory, at the time said territories become a state not transferred to the United States Circuit or District Courts in the State of Oklahoma, shall be proceeded with, held and determined by the courts of said state, the successors of said District Courts of the Territory of Oklahoma, and the United States Courts of the Indian Territory, with the right to prosecute appeals or writs of error to the supreme or appellate court of said state, and also with the same right to prosecute appeals or writs of error from the final determination in such cases made by the supreme or appellate court of such state to the Supreme Court of the United States, as is provided by law for appeals and writs of error from the supreme or final appellate court of a state to the Supreme Court of the United States. All criminal cases pending in the United States Courts in the Indian Territory not transferred to the United States Circuit or District Courts in the said State of Oklahoma shall be

prosecuted to a final determination in the State Courts of Oklahoma, under the laws now in force in that territory."

3rd. The court also overlooked and failed to consider the preamble to the schedule to the Constitution of the State of Oklahoma, and Sections 1, 2 and 23 of the schedule to the Constitution, which read as follows, to wit:

"In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the Territory of Oklahoma, it is hereby declared as follows:

"Section 1. No existing rights, actions, suits, proceedings, contracts, or claims shall be effected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. And all processes which may have been issued previous to the admission of the state into the Union under the authority of the Territory of Oklahoma, or under the authority of the laws in force in the Indian Territory, shall be as valid as if issued in the name of the state.

"Section 2. All laws in force in the Territory of Oklahoma at the time of the admission of the state into the Union, which are not repugnant to this constitution, and which are not locally inapplicable, shall be extended to and remain in force in the state of Oklahoma until they expire by their own limitation or are altered or repealed by law.

"Section 23. When this Constitution shall go into effect the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration and guardianship, and other matters pending herein shall be transferred to the county court of such county except of Day County, which shall be transferred to

the County Court of Ellis County, and the county courts of the respective counties shall proceed to final decree or judgment, order, or other termination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. The District Court of any county, the successor of the United States Court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, shall transfer to the county court of such county all matters, proceedings, records, books, papers and documents appertaining to all causes or proceedings relating to estates; Provided, that the legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed."

4th. The court overlooked and failed to consider the former decision of this court in the case of *Longest v. Langford et al.*, being cause Number 11,500, decided by the Supreme Court of the State of Oklahoma on July 24, 1923, and involving the identical question of curtesy involved in the case now before the court. This is the only case by the Supreme Court directly in point on the question of curtesy; it was specifically pointed out by defendant in error in his brief, but has been overlooked by the court in arriving at its decision herein.

5th. The court overlooked and failed to consider the specific provisions of Section 22 of the Choctaw-Chickasaw Supplemental Agreement, 32 U. S. Statutes 641, extending in force in the Indian Territory the provisions of Chapter 49 of Mansfield's Digest of the Statutes of Arkansas, and it further overlooked the specific provisions of Chapter 49 of Mansfield's Digest of the Statutes of Arkansas as so extended.

6th. The court also overlooked and failed to consider the specific provisions of the statute of limitations governing the maintenance of this action by W. M. Patterson, to wit:

Sections 4471, 4474 and 4476 of Mansfield's Digest of the Laws of Arkansas, which read as follows:

"Sec. 4471. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits either in law or equity for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed."

"Section 4474. All actions against the purchaser, his heirs or assigns, for the recovery of lands sold at judicial sales shall be brought within five years after the date of such sale, and not thereafter; saving to minors and persons of unsound mind the period of three years after such disability shall have been removed."

"Section 4476. No action for the recovery of real property, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff, or his testator or intestate, has been five years out of possession."

7th. The court overlooked and failed to consider the plain provisions of Section 6566 of the Revised Statutes of Oklahoma of 1910, and in holding that the date of the guardianship sale would be the date of the order of confirmation, and in this respect the court has further overlooked its own repeated holdings, and its controlling decisions in the following cases, to wit:

Shoals v. *Freeland*, 91 Okla. 238, 217 Pac. 176.
Morrison v. *Burnett*, 154 Fed. 617.
Snell et al. v. *Conard et al.*, 95 Okla. 145, 218 Pac. 813.

8th. **The court overlooked and failed to consider** the former holdings and controlling decisions of this court on the question of the running of the Statute of Limitations as to Doroth A. Patterson and Shelby A. Patterson in the case of *Wray v. Howard et al.*, 79 Okla. 223, 192 Pac. 584, and *Glory v. Bagby et al.*, 79 Okla. 155, 188 Pac. 881, in both of which cases this court held:

> "Where a minor's property has been sold at a void or fraudulent guardian's sale, and a guardian's deed executed and filed of record, and such grantee and those claiming under him remain continuously in possesison thereof thereafter, the minor's cause of action is not barred by reason of subdivision 2, section 4655, Rev. Laws 1910, within five years after the recording of the deed, but by virtue of Section 4656, Rev. Laws 1910, the minor may begin an action to set aside said sale at any time prior to two years after his legal disability is removed."

Wherefore, defendant in error prays that a rehearing of said cause may be granted by your Honorable Court.

Wm. G. Davisson,
Attorney for Defendant in Error.

We acknowledge service of a copy of the within petition for rehearing and of defendant in error's brief in support thereof, and of application for oral argument, on this 24th day of July, 1925.

Hatchett & Semple,
Attorneys for Plaintiffs in Error.

And thereafter on the 22nd day of December, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry submitting for oral argument, which said Journal Entry is recorded in Journal No. 12 at page 580, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1925, December 22nd, 1925. Third Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Dec. 22, 1925, Supreme Court convened pursuant to adjournment of Dec. 15th, 1925.

Present: G. M. Nicholson, Chief Justice; F. P. Branson, J. B. Harrison, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

. . . . . .

12797 W. M. Patterson, et al. vs. U. S. Joines.

. . . . . .

And now on this day the above cause is argued orally and submitted on the record, briefs and oral argument.

Journal 12, Page 580.

And thereafter on the 12th day of January, 1926, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry denying Petition for Rehearing, which said Journal Entry is recorded in Journal No. 12, at page 584, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1925, January 12th, 1926. Fifth Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Jan. 12, 1926, Supreme Court convened pursuant to adjournment of Jan. 5, 1926.

Present: G. M. Nicholson, Chief Justice; F. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * *

12797. Patterson et al. vs. Joines.

* * * * * * * * * *

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

* * * * * * * * * *

Journal 12, page 584.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. Case No. 12,797.

PETITION FOR STAY OF MANDATE PENDING REVIEW BY THE SUPREME COURT OF THE UNITED STATES.

Comes now the defendant in error, U. S. Joines, and respectfully shows to the court that the decision and judgment of this Honorable Court in the above styled and numbered cause involves numerous Federal questions.

That the lands involved in this action were a part of the allotable lands of the Choctaw and Chickasaw Tribes of Indians, and that said lands were allotted pursuant to the treaties, regulations and acts of Congress and departmental regulations governing the al-

lotment and distribution of such lands, and that the determination of the issues herein involved, the construction and application of said federal statutes relating to the allotment, descent and distribution of said lands, the construction of the statutes of the State of Arkansas extended in force in the Indian Territory by Federal enactment prior to the formation of the State of Oklahoma, the construction of Federal acts pertaining to the territorial government of Indian Territory and the sale of lands by guardianship proceedings therein, the construction of the Federal act known as the Enabling Act under and by virtue of which Oklahoma became a state and was admitted into the Union, the construction of certain provisions of the Constitution of the State of Oklahoma enacted pursuant to the provisions of the Enabling Act aforesaid, and the determination of the right, title and interest acquired by defendant in error under and pursuant to the Federal statutes and treaties aforesaid.

Your petitioner further shows to the court that the decision of this court in this cause is against the title, rights and privileges in the allotted lands acquired and claimed by this defendant in error by virtue of the provisions of the Federal Statutes, Treaties and Laws aforesaid, and by reason thereof it is the intent and purpose of this defendant in error to immediately proceed by writ of error or certiorari to have said cause reviewed by the Supreme Court of the United States of America.

Wherefore, your petitioner hereby gives legal notice of his intent as aforesaid, and respectfully prays that the Mandate herein be stayed for a period of sixty days to give this petitioner time to have the record in said cause prepared and lodged in the Supreme Court of the United States, in manner and form as provided by law and the rules of said court, and that thereafter

said Mandate be stayed pending the final determination of this cause in said court, and pursuant to its orders.

U. S. Joines,
Defendant in Error.
By Wm. G. Davisson,
Attorney for Defendant in Error.

Filed in Supreme Court of Oklahoma Jan. 18, 1926. William M. Franklin, Clerk.

And thereafter on the 26th day of January, 1926, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry Staying Mandate, which said Journal Entry is recorded in Journal No. 12, at page 590, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1926, January 26th, 1926. Seventh Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Jan. 26, 1926, Supreme Court convened pursuant to adjournment of Jan. 19, 1926.

Present: G. M. Nicholson, Chief Justice; J. B. Harrison, F. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

. . . . . .

12797. Patterson et al. vs. Joines.

And now on this day it is ordered by the court that

the mandate of this court in the above cause be, and the same is hereby stayed pending appeal to the Supreme Court of the United States, for a period of 60 days.

* * * * * * * * * * *

Journal 12, page 588.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, Minors, by their next friend, W. M. Patterson, Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. Case No. 12,797.

PRAECIPE FOR TRANSCRIPT

To the Clerk of the Above Entitled Court:

You are hereby requested to make a complete transcript of the record of this cause to be used in an application to the Supreme Court of the United States for Writ of Certiorari in said cause; the record to consist of:

(a) The complete record on appeal from the trial court to the Supreme Court of Oklahoma.

(b) The opinions of the Supreme Court of the State of Oklahoma filed therein.

(c) All journal entries contained in the records and proceedings of the Supreme Court of the State of Oklahoma relating to said cause.

(d) All motions for rehearing in said cause and the judgment of the court thereon.

(e) The petition and order staying mandate in said cause.

(f) The final judgment and decision of the Supreme Court of the State of Oklahoma.

And any other documents necessary to make said record full and complete as required by the rules of the Supreme Court of the United States, whether enumerated herein or not.

You will further attach to said record your certificate that it is a full and complete record in said cause.

Dated this the 28th day of January, 1926.

Wm. G. Davisson,
Attorney for U. S. Joines.

Filed in Supreme Court of Oklahoma Jan. 29, 1926. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CLERK'S CERTIFICATE

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 155 pages, numbered from 1 to 155, inclusive, is a true and complete transcript of the record and all proceedings in the said Supreme Court of Oklahoma in the case of W. M. Patterson et al. vs. U. S. Jones, Number 12,797, as the same remains upon the files and records of said Supreme Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the 4th day of February, 1926.

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma

IN THE SUPREME COURT OF THE UNITED STATES.

U. Sherman Joines, Petitioner, vs. William M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, minors, by their next friend, William M. Patterson, Respondents. Case No. ——

Acknowledgment of Service of Transcript.

We, the undersigned, attorneys for the respondents and each of them, do hereby acknowledge service on us of a copy of the attached and foregoing transcript in the above styled and numbered cause, on this the —— day of February, 1926.

HAYES & McINTOSH,
HATCHETT & SEMPLE,
Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 15, 1926

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.